No. 16-1454

In the Supreme Court of the United States

STATES OF OHIO, CONNECTICUT, IDAHO, ILLINOIS, IOWA, MARYLAND, MICHIGAN, MONTANA, RHODE ISLAND, UTAH, AND VERMONT,

Petitioners,

v.

AMERICAN EXPRESS COMPANY, AND AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JUNE 2, 2017
CERTIORARI GRANTED OCTOBER 16, 2017

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Appendix H: Order denying rehearing en banc, Second Circuit Court of Appeals, Jan. 5, 2017 .... 324a

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RELEVANT DOCKET ENTRIES

United States of America, et al. v.
American Express Company, et al.,
U.S. District Court
Eastern District of New York (Brooklyn)
Case No. 1:10-cv-04496

10/04/2010	1	COMPLAINT against America Express Company, American Express Travel Related Services Company, Inc., Mastercard International Incorporated, Visa Inc. Disclosure Statement on Civil Cover Sheet completed -No,, filed by State of Maryland, State of Connecticut, State of Iowa, State of Texas, State of Michigan, United States of America, State of Ohio, State of Missouri. (Attachments: # 1 Civil Cover Sheet) (Davis, Kimberly) (Entered: 10/04/2010)
10/04/2010		Summons Issued as to America Express Company, American Express Travel Related Services Company, Inc., Mastercard International Incorporated, Visa Inc. (Davis, Kimberly) (Entered: 10/04/2010)
10/04/2010	3	NOTICE by United States of America of the Applicability of the APPA to the Proposed Final Judgment (Malawer, Gregg) (Entered: 10/04/2010)

10/04/2010	4	NOTICE of Settlement Stipulation Concerning Entry of PROPOSED Final Judgment as to Defendants Visa and MasterCard, After Compliance with the APPA by United States of America (Attachments: # 1 Exhibit A -- PROPOSED Final Judgment as to Defendants Visa and MasterCard) (Malawer, Gregg) (Entered: 10/04/2010)
10/04/2010	5	NOTICE by United States of America Competitive Impact Statement (Concerning PROPOSED Final Judgment as to Defendants Visa and MasterCard) (Malawer, Gregg) (Entered: 10/04/2010)
10/14/2010	16	NOTICE by Mastercard International Incorporated / Description of Written or Oral Communications Concerning Proposed Final Judgment and Certification of Compliance with 15 U.S.C. § 16(g) by Mastercard International Incorporated (Attachments: # 1 Certificate of Service) (Finch, Andrew) (Entered: 10/14/2010)
10/18/2010	22	NOTICE by Mastercard International Incorporated / Supplemental Description of Written or Oral Communications Concerning Proposed Final

		Judgment and Certification of Compliance with 15 U.S.C. § 16(g) (Attachments: # 1 Certificate of Service) (Finch, Andrew) (Entered: 10/18/2010)
12/07/2010	46	ANSWER to 1 Complaint, by American Express Company, American Express Travel Related Services Company, Inc. (Brenner, Eric) (Entered: 12/07/2010)
12/07/2010	47	Letter dated 12/6/2010 from Eugene A. Spector to the Clerk of Court attaching a Copy of motion of Plaintiff for transfer of Actions pursuant to 28 USC 1407 and supporting documents. (Attachments: # 1 Copy of Motion for Transfer of Actions filed before the MDL panel, # 2 Copy of Brief in support, # 3 Schedule of Actions, # 4 Proof of Service, # 5 Exhibit Part 1, # 6 Exhibit Part 2, # 7 Exhibit Part 3, # 8 Exhibit Part 4, # 9 Exhibit Part 5, # 10 Exhibit Part 6, # 11 Exhibit Part 7, # 12 Exhibit Part 8, # 13 Exhibit Part 9, # 14 Exhibit Part 10, # 15 Exhibit Part 11, # 16 Exhibit Part 12, # 17 Exhibit Part 13, # 18 Exhibit Part 14, # 19 Exhibit Part 15, # 20 Exhibit Part 16) (Marziliano, August) (Entered: 12/08/2010)
12/10/2010		Minute Entry for proceedings held

before Judge Nicholas G. Garaufis: Status Conference held on 12/9/2010. No parties object to consolidation before this court by the Judicial Panel on Multidistrict Litigation of the cases discussed at conference, and will so inform the MDL panel. All parties agree that they will provide the court with a joint discovery schedule within sixty days. The United States has also stated that it will soon file an Amended Complaint in its action. (Court Reporter Holly Driscoll.) Associated Cases: 1:08-cv-02315-NGG-RER, 1:08-cv-02316-NGG-RER, 1:08-cv-02317-NGG-RER, 1:08-cv-02380-NGG-RER, 1:08-cv-02406-NGG-RER, 1:10-cv-04496-NGG-RER, 2:10-cv-05200-DRH-ARL, 2:10-cv-05369-NGG-RER. (Sherkow, Jacob) (Entered: 12/10/2010)

12/14/2010 51 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on December 9, 2010, before Judge Garaufis. Court Reporter/Transcriber H. Driscoll, Telephone number (718)613-2274. Email address: hdrisc@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/ Transcriber before the deadline for

		Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/4/2011. Redacted Transcript Deadline set for 1/14/2011. Release of Transcript Restriction set for 3/14/2011. (Driscoll, Holly) (Entered: 12/14/2010)
12/20/2010	55	STIPULATION Regarding Additional Parties to Proposed Final Judgment by United States of America (Matelson, Bennett) (Entered: 12/20/2010)
12/20/2010	56	CERTIFICATE OF SERVICE by United States of America (Matelson, Bennett) (Entered: 12/20/2010)
12/21/2010	57	AMENDED COMPLAINT against American Express Company, American Express Travel Related Services Company, Inc., Mastercard International Incorporated, Visa Inc., filed by State of Maryland, State of Connecticut, United States of America, State of Ohio, State of Missouri, State of Iowa, State of Michigan, State of Texas, State of Illinois, State of Tennessee, State of Montana, State of Nebraska, State of Idaho, State of Vermont, State of Utah, State of Arizona, State of Rhode Island, State of Hawaii, State of New Hampshire. (Matelson, Bennett) (Entered:

		12/21/2010)
12/21/2010	58	CERTIFICATE OF SERVICE by United States of America (Matelson, Bennett) (Entered: 12/21/2010)
01/04/2011	61	Amended ANSWER to 57 Amended Complaint,, by American Express Company, American Express Travel Related Services Company, Inc. (Korologos, Philip) (Entered: 01/04/2011)
03/02/2011	92	DISCOVERY COORDINATION ORDER. So Ordered by Magistrate Judge Ramon E. Reyes, Jr on 3/2/2011. (Vertus, Miriam) (Main Document 92 replaced on 3/11/2011) (Vertus, Miriam). (Entered: 03/03/2011)
03/02/2011	93	SCHEDULING ORDER: The following discovery order shall be in place, and supercedes previous scheduling orders in the cases. See attached order for details. So Ordered by Magistrate Judge Ramon E. Reyes, Jr on 3/2/2011. (Vertus, Miriam) (Main Document 93 replaced on 3/11/2011) (Vertus, Miriam). (Entered: 03/03/2011)
04/07/2011	103	STIPULATION of Dismissal Without Prejudice of the Claim Asserted by State of Hawaii (Kimura, Rodney) (Entered: 04/07/2011)

04/12/2011	104	Stipulation for Dismissal without Prejudice of the Claim of the State of Hawaii. So Ordered by Judge Nicholas G. Garaufis on 4/8/2011. (Lee, Tiffeny) (Entered: 04/12/2011)
06/14/2011	119	Letter regarding filing of United States' Response to Public Comments on proposed Final Judgment by United States of America (Attachments: # 1 United States' Response to Public Comments, # 2 Comment from Merchant Class Plaintiffs, # 3 Comment from Individual Merchant Plaintiffs, # 4 Comment from Consumer World, # 5 Comment from Retail Industry Leaders Association, # 6 Comment from Sears Holdings Corporation, # 7 Comment from MDL 1720 Merchant Class Plaintiffs, # 8 Exhibit 1 to Comment from MDL 1720 Merchant Class Plaintiffs, # 9 Exhibit 2 to Comment from MDL 1720 Merchant Class Plaintiffs, # 10 Exhibit 3 to Comment from MDL 1720 Merchant Class Plaintiffs, # 11 Exhibit 4 to Comment from MDL 1720 Merchant Class Plaintiffs, # 12 Exhibit 5 to Comment from MDL 1720 Merchant Class Plaintiffs, # 13 Exhibit 6 to Comment from MDL 1720 Merchant Class Plaintiffs, # 14 Declaration of Judson Reed

(Visa), # 15 Letter from Visa Counsel to United States, # 16 Declaration of Brad Tomchek (MasterCard), # 17 Letter from MasterCard Counsel to United States) (Matelson, Bennett) (Entered: 06/14/2011)

06/14/2011 120 MOTION for Application to Excuse Federal Register Publication pursuant to 15 U.S.C. 16(d) by United States of America. (Attachments: # 1 Proposed Order, # 2 Order from United States v. Keyspan, # 3 Order from United States v. Ticketmaster) (Matelson, Bennett) Modified docket text on 6/22/2011 (Lee, Tiffeny). (Entered: 06/14/2011)

06/22/2011 121 ORDER re 120 : Accordingly, the United States is excused from publishing the substance of the public comments in the Federal Register, see 15 U.S.C. § 16(d)(2), except for a notice stating that it received six public comments in this case, and that the comments and the United States' responses are available on the DOJ's website. In mentioning that this material is available on theDOJ's website, the United States should also include an appropriate, permanent website address pointing to those comments online. The United States shall also

		certify to the court that it has published such notice by proof of publication filed on the court's docket. So Ordered by Judge Nicholas G. Garaufis on 6/20/2011. (Lee, Tiffeny) (Entered: 06/22/2011)
07/14/2011	132	STIPULATION and [Proposed] Order For The Preservation And Production of Documents And Electronically Stored Information by United States of America (Attachments: # 1 Proposed Order Stipulation and [Proposed] Order For The Preservation And Production Of Documents And Electronically Stored Information) (Hamer, Mark) (Entered: 07/14/2011)
07/14/2011	133	NOTICE by United States of America of Publication in Federal Register (Attachments: # 1 Exhibit Federal Register Notice) (Matelson, Bennett) (Entered: 07/14/2011)
07/14/2011	134	MOTION for pre motion conference re Entry of Final Judgment as to Defendants Visa and MasterCard by United States of America. (Attachments: # 1 Final Judgment, # 2 Certificate of Compliance) (Matelson, Bennett) (Entered: 07/14/2011)
07/14/2011	136	STIPULATION and Order For The Preservation And Production of

		Documents And Electronically Stored Information. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 7/14/2011. (Lee, Tiffeny) (Entered: 07/18/2011)
07/20/2011	142	MEMORANDUM AND ORDER: The court FINDS that the Proposed Final Judgment is in public interest pursuant to 15 U.S.C. § 16(e). The court will approve the Proposed Final Judgment separately. The court also FINDS, under Federal Rule of Civil Procedure 54(b), that there is no just reason for delay in entry of the final judgment against Defendants MasterCard International Incorporated and Visa Inc., and directs the Clerk of Court to enter final judgment against these Defendants after the court has approved the Proposed Final Judgment. So Ordered by Judge Nicholas G. Garaufis on 7/20/2011. (Lee, Tiffeny) (Entered: 07/20/2011)
07/20/2011	143	FINAL JUDGMENT as to Defendants Mastercard International Incorporated and Visa Inc. Ordered by Judge Nicholas G. Garaufis on 7/20/2011. (Lee, Tiffeny) (Entered: 07/20/2011)
09/02/2011	159	Proposed Scheduling Order AMENDED by Individual Plaintiffs in 11-md-2221 (Germaine, David)

(Entered: 09/02/2011)

09/06/2011 160 ORDER re 159 Proposed Scheduling Order filed by Individual Plaintiffs in 11-md-2221. Proposed amended scheduling order is "So Ordered." (See attached order for further information.) Conference dates previously set. See Minute Entry dated 8/30/2011. Ordered by Magistrate Judge Ramon E. Reyes, Jr. on 9/6/2011. (Rivera, Marta) (Entered: 09/06/2011)

03/09/2012 207 Letter to Magistrate Judge Reyes re Application to Lift Partial Stay by Class Plaintiffs in 11-md-2221 (Kitzman, Tracey) (Entered: 03/09/2012)

03/16/2012 ORDER re 207 Letter filed by Class Plaintiffs in 11-md-2221. American Express is directed to respond to the Class Plaintiffs' motion by 3/21/2012 via ECF and by sending one courtesy hard copy to chambers. Ordered by Magistrate Judge Ramon E. Reyes, Jr. on 3/16/2012. (Martone, Heather) (Entered: 03/16/2012)

03/19/2012 209 Letter to Hon. Ramon E. Reyes re Supplemental Authority by Class Plaintiffs in 11-md-2221 (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Friedman, Gary) (Entered: 03/19/2012)

03/21/2012	212	Letter from Evan R. Chesler to Magistrate Judge Reyes in opposition to Class Plaintiffs' application to lift the partial stay of class proceedings by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Exhibit A to Chesler 3.21.12 Letter, # 2 Exhibit B to Chesler 3.21.12 Letter, # 3 Exhibit C to Chesler 3.21.12 Letter, # 4 Exhibit D to Chesler 3.21.12 Letter, # 5 Exhibit E to Chesler 3.21.12 Letter, # 6 Exhibit F to Chesler 3.21.12 Letter, # 7 Exhibit G to Chesler 3.21.12 Letter, # 8 Exhibit H to Chesler 3.21.12 Letter, # 9 Exhibit I to Chesler 3.21.12 Letter, # 10 Exhibit J to Chesler 3.21.12 Letter, # 11 Exhibit K (Part 1) to Chesler 3.21.12 Letter, # 12 Exhibit K (Part 2) to Chesler 3.21.12 Letter, # 13 Exhibit L to Chesler 3.21.12 Letter) (Chesler, Evan) (Entered: 03/21/2012)
03/27/2012	213	Minute Entry for proceedings held before Magistrate Judge Ramon E. Reyes, Jr:Status/Motion Conference held on 3/27/2012. Discussions held. re 145 Letter application to Lift Partial Stay is denied, reason on record. [146-2]Scheduling order entered. Attendance sheet is

		attached. (Tape #4:39:49 - 5:57:06.) Associated Cases: 1:11-md-02221-NGG-RER et al. (Vertus, Miriam) (Entered: 03/28/2012)
03/28/2012	214	AMENDED SCHEDULING ORDER: See attached order for deadlines. So Ordered by Magistrate Judge Ramon E. Reyes, Jr on 3/27/2012. Associated Cases: 1:11-md-02221-NGG-RER et al. (Vertus, Miriam) (Entered: 03/28/2012)
06/14/2012		ORDER re 220 Letter filed by American Express Company, American Express Travel Related Services Company, Inc. The parties' Deposition Coordination Order is "so ordered." Ordered by Magistrate Judge Ramon E. Reyes, Jr. on 6/14/2012. (Martone, Heather) (Entered: 06/14/2012)
12/18/2012	259	AMENDED SCHEDULING ORDER: The following discovery order shall be in place, and supersedes previous scheduling order in the cases. See attached order for further details. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 12/14/2012. (Vertus, Miriam) (Entered: 12/18/2012)
01/16/2013		ORDER re 261 Status Report filed by American Express Company. Per the Status Report the following is

		entered as an amendment to the current scheduling order: 1. The parties shall exchange proposed expert discovery orders simultaneously on February 15, 2013. These proposals will not be filed with the Court. 2. The parties shall meet and confer, and then shall file a joint expert discovery order, or competing proposed orders with supporting letter briefs (no more than three pages per side), along with a status report on March 1, 2013. Status Conference set for 3/8/2013 at 11:00 AM in Courtroom 2E North before Magistrate Judge Ramon E. Reyes, Jr. Ordered by Magistrate Judge Ramon E. Reyes, Jr. on 1/16/2013. (Morales, Luis) (Entered: 01/16/2013)
03/08/2013	265	EXPERT DISCOVERY ORDER re 230 filed in case 1:11-md-02221-NGG-RER "so ordered" by Magistrate Judge Ramon E. Reyes, Jr. on 3/08/2013. Associated Cases: 1:11-md-02221-NGG-RER et al. (Morales, Luis) (Entered: 03/08/2013)
06/28/2013		ORDER: The proposed briefing schedule for American Express' motion to dismiss the claims of class Plaintiffs in favor of arbitration, submitted on consent of class Plaintiffs, is hereby APPROVED.

	American Express shall serve its motion by July 10, 2013; class Plaintiffs' opposition must be served by July 24, 2013; American Express shall serve its reply and file the fully-bundled motion with the court by August 5, 2013. The court deputy will contact all of the parties in 11-MD-2221 and 10-CV-4496 to set a status conference to address scheduling matters relating to the various parties' proposed motions for summary judgment and consolidation. Ordered by Judge Nicholas G. Garaufis on 6/28/2013. (White, Sarah) (Entered: 06/28/2013)
07/25/2013	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Status conference with the parties in 11-MD-2221 and 10-CV-4496, which were consolidated for discovery, held on July 25, 2013. Richard Arnold, Paul Slater, and Eric Bloom appeared for the individual plaintiffs; Tracey Kitzman appeared for the class plaintiffs; Rachel Davis appeared for the state plaintiffs; Craig Conrath and Mark Hamer appeared for the United States; Evan Chesler, Kevin Orsini, and Phil Korologis appeared for American Express. Discovery is expected to close as

scheduled on August 15, 2013, with minor exceptions as agreed upon by all parties. The parties were heard regarding American Express's proposed motions for summary judgment and to consolidate the cases for trial, and on possible Daubert issues. The court set the following briefing schedule: Motions for summary judgment and to consolidate the cases for trial must be served by September 26, 2013; opposition to the motions must be served by November 21, 2013; replies, if any, must be served and the fully-briefed motions filed on ECF by January 9, 2013. Daubert motions relevant to the summary judgment briefing may be served alongside the motions for summary judgment. (Court Reporter Anthony Frisolone.) (White, Sarah) (Entered: 07/25/2013)

09/26/2013 281 Notice of MOTION for Summary Judgment and [Proposed] Order by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013 282 MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc.

(Attachments: # 1 Memorandum of Law in Support of Defendants' Motion for Summary Judgment, # 2 Defendants' Statement of Material Undisputed Facts in Support of their Motion for Summary Judgment, # 3 Declaration of Kevin J. Orsini in Support of Defendants' Motion for Summary Judgment) (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013 283 EXHIBIT S to the Declaration of Kevin J. Orsini in Support of Defendants' Motion for Summary Judgment by American Express Company, American Express Travel Related Services Company, Inc. Related document: 282 Motion for Leave to Electronically File Document under Seal, Sealed,, filed by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Exhibit 8, # 2 Exhibit 10, # 3 Exhibit 37, # 4 Exhibit 38, # 5 Exhibit 39, # 6 Exhibit 41, # 7 Exhibit 44, # 8 Exhibit 48, # 9 Exhibit 49, # 10 Exhibit 50, # 11 Exhibit 52, # 12 Exhibit 61, # 13 Exhibit 64, # 14 Exhibit 65, # 15 Exhibit 66, # 16 Exhibit 67, # 17 Exhibit 68, # 18 Exhibit 69, # 19 Exhibit 70, # 20 Exhibit 71, # 21 Exhibit 72, # 22

Exhibit 73, # 23 Exhibit 74, # 24 Exhibit 75, # 25 Exhibit 92, # 26 Exhibit 98, # 27 Exhibit 143, # 28 Exhibit 144, # 29 Exhibit 153, # 30 Exhibit 157, # 31 Exhibit 162, # 32 Exhibit 164, # 33 Exhibit 178, # 34 Exhibit 180) (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013 284 Letter from Evan R. Chesler to Hon. Nicholas G. Garaufis re Defendants' Motion for Summary Judgment by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013 285 Notice of MOTION to Consolidate Cases for the Purpose of Trial and [Proposed] Order by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013 286 MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Memorandum of Law in Support of Defendants' Motion to Consolidate for the Purpose of Trial, # 2 Declaration of Justine V. Beyda, # 3 Exhibit 8 to Beyda Declaration, # 4 Exhibit 9 to

Beyda Declaration, # 5 Exhibit 10 to Beyda Declaration, # 6 Exhibit 11 to Beyda Declaration, # 7 Exhibit 12 to Beyda Declaration, # 8 Exhibit 13 to Beyda Declaration, # 9 Exhibit 14 to Beyda Declaration, # 10 Exhibit 15 to Beyda Declaration, # 11 Exhibit 16 to Beyda Declaration, # 12 Exhibit 17 to Beyda Declaration, # 13 Exhibit 18 to Beyda Declaration, # 14 Exhibit 19 to Beyda Declaration, # 15 Exhibit 20 to Beyda Declaration, # 16 Exhibit 21 to Beyda Declaration, # 17 Exhibit 22 to Beyda Declaration, # 18 Exhibit 23 to Beyda Declaration, # 19 Exhibit 24 to Beyda Declaration, # 20 Exhibit 25 to Beyda Declaration, # 21 Exhibit 27 to Beyda Declaration, # 22 Exhibit 28 to Beyda Declaration, # 23 Exhibit 29 to Beyda Declaration, # 24 Exhibit 30 to Beyda Declaration, # 25 Exhibit 31 to Beyda Declaration, # 26 Exhibit 32 to Beyda Declaration, # 27 Exhibit 33 to Beyda Declaration, # 28 Exhibit 34 to Beyda Declaration, # 29 Exhibit 36 to Beyda Declaration, # 30 Exhibit 37 to Beyda Declaration, # 31 Exhibit 38 to Beyda Declaration, # 32 Exhibit 39 to Beyda Declaration, # 33 Exhibit 40 to Beyda Declaration) (Chesler, Evan) (Entered: 09/26/2013)

09/26/2013	287	EXHIBIT 1 to the Declaration of Justine V. Beyda by American Express Company, American Express Travel Related Services Company, Inc. Related document: 286 Motion for Leave to Electronically File Document under Seal, Sealed,,,,,,,,,,,, filed by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Exhibit 2 to Beyda Declaration, # 2 Exhibit 3 to Beyda Declaration, # 3 Exhibit 4 to Beyda Declaration, # 4 Exhibit 5 to Beyda Declaration, # 5 Exhibit 6 to Beyda Declaration, # 6 Exhibit 7 to Beyda Declaration, # 7 Exhibit 26 to Beyda Declaration, # 8 Exhibit 35 to Beyda Declaration) (Chesler, Evan) (Entered: 09/26/2013)
09/26/2013	288	MOTION to Seal ("Application for Leave to File Defendants' Exhibits 1-6, 9, 11-36, 40, 42-43, 45-47, 51, 53-60, 62-63, 76-91, 93-97, 99-142, 145-147, 150-152, 154-156, 158-161, 163, 165-177, 179, 181-192 to the Declaration of Kevin J. Orsini in Support of Defendants' Motion for Summary Judgment Under Seal"(original sealed exhibits filed with the Clerk's Office)) by American Express Company, American Express Travel Related

		Services Company, Inc. (Chesler, Evan) (Entered: 09/26/2013)
11/21/2013	293	MEMORANDUM in Opposition to Defendants' Motion to Consolidate for the Purpose of Trial filed by United States of America. (Attachments: # 1 Declaration, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit) (Hamer, Mark) (Entered: 11/21/2013)
12/06/2013	294	MOTION for Leave to Electronically File Document under Seal Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment by United States of America. (Attachments: # 1 Memorandum in Opposition) (Hamer, Mark) (Entered: 12/06/2013)
12/06/2013	295	MOTION for Leave to Electronically File Document under Seal Declaration of Mark Hamer in Opposition to Defendants' Motion for Summary Judgment by United States of America. (Attachments: # 1 Declaration) (Hamer, Mark) (Entered: 12/06/2013)
12/06/2013	296	MOTION for Leave to Electronically File Document under Seal Plaintiffs' Rule 56.1 Counter-

		Statement of Material Facts in Opposition to Defendants' Motion for Summary Judgment by United States of America. (Attachments: # 1 Rule 56.1 Statement) (Hamer, Mark) (Entered: 12/06/2013)
12/19/2013	303	Letter Enclosing Supplemental Authority Supporting Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment (docket no. 294) by United States of America (Attachments: # 1 Exhibit) (Ewalt, Andrew) (Entered: 12/19/2013)
01/09/2014	308	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Reply Memorandum of Law in Further Support of Defendants' Motion to Consolidate for the Purpose of Trial, # 2 Declaration of Justine V. Beyda in Further Support of Motion to Consolidate for the Purpose of Trial, # 3 Exhibit 41 to Beyda Declaration, # 4 Exhibit 42 to Beyda Declaration, # 5 Exhibit 43 to Beyda Declaration, # 6 Exhibit 44 to Beyda Declaration, # 7 Exhibit 45 to Beyda Declaration, # 8 Exhibit 46 to Beyda Declaration, # 9 Exhibit 47 to Beyda Declaration, # 10 Exhibit 48 to Beyda

		Declaration) (Chesler, Evan) (Entered: 01/09/2014)
01/10/2014	309	Letter to Judge Garaufis from K. Orsini regarding Defendants' Reply in Further Support of Their Motion to Consolidate for the Purpose of Trial by American Express Company, American Express Travel Related Services Company, Inc. (Orsini, Kevin) (Entered: 01/10/2014)
01/14/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Scheduling Conference held on 1/14/2014: All parties were present and discussed scheduling of pre-trial matters as well as the Class Plaintiffs' proposed settlement. The court issued the following orders:(1) A final pre-trial conference will be held on June 6, 2014, at 11 am in Courtroom 4D and trial will begin on June 16, 2014. The court has not yet decided the issue of consolidation. (2)Defendants, Government Plaintiffs, and Individual Merchant Plaintiffs are directed to confer regarding the scheduling of pre-trial matters and shall propose an agreed-upon schedule to the court within seven days. Should they be unable to agree on a joint schedule, parties shall signal their disagreement at

		that time. (3)Oral argument on Defendants' motions for summary judgment in the Government Plaintiffs' and Individual Merchant Plaintiffs' cases is scheduled for Wednesday, March 19, 2014, at 2:00 pm in Courtroom 4D. (4)Within ten days, the Individual Merchant Plaintiffs shall file a letter with the court regarding their interpretation of paragraph 24 of Class Plaintiffs' proposed preliminary approval order. The Class Plaintiffs and Defendants shall have ten days to respond. (Court Reporter Victoria Torres-Butler.) (King, Alyssa) (Entered: 01/14/2014)
01/24/2014	312	PRETRIAL SCHEDULING ORDER. So Ordered by Judge Nicholas G. Garaufis on 1/21/2014. (Lee, Tiffeny) (Entered: 01/24/2014)
01/24/2014	313	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Reply Memorandum of Law in Further Support of Defendants' Motion for Summary Judgment, # 2 Defendants' Reply to Plaintiffs' Rule 56.1 Counter-Statement of Material Facts in Opposition to Defendants' Motion for Summary Judgment)

(Chesler, Evan) (Entered: 01/24/2014)

02/04/2014 316 Letter MOTION for Leave to File Sur-Reply Memorandum of Law in Further Opposition to Defendants' Motion for Summary Judgment by United States of America. (Ewalt, Andrew) (Entered: 02/04/2014)

02/04/2014 317 RESPONSE in Opposition re 316 Letter MOTION for Leave to File Sur-Reply Memorandum of Law in Further Opposition to Defendants' Motion for Summary Judgment filed by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 02/04/2014)

02/11/2014 318 ORDER denying 285 Motion to Consolidate for the Purposes of Trial. Ordered by Judge Nicholas G. Garaufis on 2/11/2014. (Chapin, Benjamin) (Entered: 02/11/2014)

02/12/2014 319 ORDER granting 316 Motion for Leave to File a sur-reply not exceeding 3 pages in length is granted.. Ordered by Judge Nicholas G. Garaufis on 2/4/2014. (Piper, Francine) (Entered: 02/12/2014)

02/12/2014 320 MEMORANDUM in Opposition re 281 Notice of MOTION for

		Summary Judgment and [Proposed] Order(Sur-Reply Memorandum of Law) filed by United States of America. (Ewalt, Andrew) (Entered: 02/12/2014)
02/20/2014	321	MEMORANDUM in Opposition re 281 Notice of MOTION for Summary Judgment and [Proposed] Order[PUBLIC VERSION] filed by United States of America. (Ewalt, Andrew) (Entered: 02/20/2014)
02/24/2014		SCHEDULING ORDER: Motion Hearing before Judge Nicholas G. Garaufis: The oral argument on summary judgment originally scheduled for 2:00 p.m. on March 19, 2014, will now commence at 3:00 p.m. on the same day. Ordered by Judge Nicholas G. Garaufis on 2/24/2014. (King, Alyssa) (Entered: 02/24/2014)
03/12/2014		SCHEDULING ORDER: Motion Hearing before Judge Nicholas G. Garaufis: At Defendants' request, and with the consent of the Government Plaintiffs and Merchant Plaintiffs, the oral argument on summary judgment scheduled for 3:00 p.m. on March 19, 2014, will now commence at 2:30 p.m. on the same day. Ordered by Judge Nicholas G. Garaufis on 3/12/2014. (Chapin, Benjamin)

		(Entered: 03/12/2014)
03/20/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Hearing held on March 19, 2014, re: Defendants' 282 Motion for Summary Judgment. All parties present. Decision reserved. (Court Reporter Michele Nardone) (King, Alyssa) (Entered: 03/20/2014)
05/07/2014	369	MEMORANDUM & ORDER: Defendants' 281 Motion for Summary Judgment is DENIED. Defendant's reading of Leegin asks the court to go against clearly stated Second Circuit law allowing an antitrust plaintiff the option of proving either actual adverse effect or market power, without any indication from the Supreme Court or Second Circuit that it must do so. The court declines this invitation. The remaining issues, including whether Plaintiffs may ultimately succeed in proving that Defendants' anti-steering rules have actual adverse effect on competition and whether Defendants have market power, raise questions of material fact. Summary judgment is thus inappropriate. So Ordered by Judge Nicholas G. Garaufis on 5/7/2014. (Lee, Tiffeny) (Main Document 369 replaced on 7/11/2014 to correct clerical error on page 5 only)

(Entered: 05/07/2014)

06/20/2014 504 MOTION for Leave to Electronically File Document under Seal by United States of America. (Attachments: # 1 Plaintiffs' Pre-Trial Memorandum) (Ewalt, Andrew) (Entered: 06/20/2014)

06/20/2014 505 MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Defendants' Pretrial Memorandum (Sealed), # 2 Declaration of Kevin J. Orsini in Support of Defendants' Pretrial Memorandum (Sealed), # 3 Exhibit A to Orsini Declaration (Sealed), # 4 Exhibit B to Orsini Declaration (Sealed)) (Chesler, Evan) (Entered: 06/20/2014)

06/24/2014 510 ORDER denying 325 327 331 333 336 338 Plaintiffs' Motions in Limine and deferring ruling on 329 Defendants' Motion in Limine. For the reasons set forth herein, Plaintiffs' motions in limine are DENIED and a decision on Defendants' motion is RESERVED until the court and parties have had an opportunity to voir dire Ms. Schmitt concerning her qualifications and their relevance to

		the opinions to be offered at trial. Ordered by Judge Nicholas G. Garaufis on 6/24/2014. (Chapin, Benjamin) (Entered: 06/24/2014)
06/26/2014	512	REDACTION Plaintiffs' Pre-Trial Memorandum [Public Version] by United States of America (Vardner, Joseph) (Entered: 06/26/2014)
06/27/2014	514	REDACTION -- Defendants' Pretrial Memorandum [Public Version] by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 06/27/2014)
07/07/2014	535	PRETRIAL ORDER. The parties' 447 Joint Pretrial Order is SO ORDERED. Ordered by Judge Nicholas G. Garaufis on 7/3/2014. (Chapin, Benjamin) (Entered: 07/07/2014)
07/08/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial begun on 7/7/2014. The parties were directed to update the court with the status of the trial clock at the end of each trial week. (Court Reporter Ronald Tolkin) (Chapin, Benjamin) (Entered: 07/08/2014)
07/09/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis:

	Bench Trial held on 7/8/2014. (Court Reporter Ronald Tolkin) (Chapin, Benjamin) (Entered: 07/09/2014)
07/10/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/9/2014. The parties were directed to: (1) provide the court with the exhibits to be used in examining or cross-examining witnesses on a daily, rather than weekly, basis; and (2) confer at the conclusion of each trial day to determine whether any inadvertent disclosures of sealed information have occurred that require redaction of the official transcript. (Court Reporter Ronald Tolkin) (Chapin, Benjamin) (Entered: 07/10/2014)
07/11/2014	Incorrect Document/Entry Information: Document 369 has been replaced to correct a clerical error on page 5 of the document this day and the NEF regenerated as to all parties. (Lee, Tiffeny) (Entered: 07/11/2014)
07/11/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/10/2014. (Court Reporter Ronald Tolkin) (Chapin, Benjamin) (Entered: 07/11/2014)

07/11/2014	538	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on July 7, 2014, before Judge Garaufis. Court Reporter/Transcriber Ronald E. Tolkin, Official Court Reporter, Telephone number 718-613-2647. Email address: ronald_tolkin@nyed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/1/2014. Redacted Transcript Deadline set for 8/11/2014. Release of Transcript Restriction set for 10/9/2014. (Tolkin, Ronald) (Entered: 07/11/2014)
07/11/2014	539	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on July 8, 2014, before Judge Garaufis. Court Reporter/Transcriber Ronald E. Tolkin, Official Court Reporter, Telephone number 718-613-2647. Email address: ronald_tolkin@nyed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court

Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/1/2014. Redacted Transcript Deadline set for 8/11/2014. Release of Transcript Restriction set for 10/9/2014. (Tolkin, Ronald) (Entered: 07/11/2014)

07/11/2014 540 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on July 9, 2014, before Judge Garaufis. Court Reporter/Transcriber Ronald E. Tolkin, Official Court Reporter, Telephone number 718-613-2647. Email address: ronald_tolkin@nyed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/1/2014. Redacted Transcript Deadline set for 8/11/2014. Release of Transcript Restriction set for 10/9/2014. (Tolkin, Ronald) (Entered: 07/11/2014)

07/11/2014 541 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of

		Proceedings held on July 10, 2014, before Judge Garaufis. Court Reporter/Transcriber Ronald E. Tolkin, Official Court Reporter, Telephone number 718-613-2647. Email address: ronald_tolkin@nyed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/1/2014. Redacted Transcript Deadline set for 8/11/2014. Release of Transcript Restriction set for 10/9/2014. (Tolkin, Ronald) (Entered: 07/11/2014)
07/13/2014	545	Redaction of 538 Transcript,, (Tolkin, Ronald) (Entered: 07/13/2014)
07/15/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/14/2014. At the parties' request, the court ordered that the courtroom be closed for the testimony of Plaintiffs' expert Professor Gary Ford to protect against disclosure of certain confidential and highly sensitive information. Before the transcript of Prof. Ford's testimony

		is made public, the Defendants may propose narrowly tailored redactions to exclude truly confidential information. To the extent the parties are unable to agree on redactions to the transcript, they may bring their dispute to the attention of the court. (Court Reporter Gene Rudolph) (Chapin, Benjamin) (Entered: 07/15/2014)
07/15/2014	549	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/14/2014 before Judge Nicholas G. Garaufis. Court Reporter/Transcriber Richard W. Barry, Telephone number 718-613-2505. Email address: rwbarrycourtreporter@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/5/2014. Redacted Transcript Deadline set for 8/15/2014. Release of Transcript Restriction set for 10/14/2014. (Barry, Richard) Modified on 8/6/2014 (DCP) (Entered: 07/15/2014)
07/16/2014		Minute Entry for proceedings held

	before Judge Nicholas G. Garaufis: Bench Trial held on 7/15/2014. (Court Reporter Richard Barry) (Chapin, Benjamin) (Entered: 07/16/2014)
07/17/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/16/2014. (Court Reporter Richard Barry) (Chapin, Benjamin) (Entered: 07/17/2014)
07/21/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/17/2014. (Court Reporter Richard Barry) (Chapin, Benjamin) (Entered: 07/21/2014)
07/22/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/21/2014. (Court Reporter Lisa Schwam) (Chapin, Benjamin) (Entered: 07/22/2014)
07/23/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/22/2014. (Court Reporter Lisa Schwam) (Chapin, Benjamin) (Entered: 07/23/2014)
07/28/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis:Bench Trial held on

	7/23/2014. (Court Reporter Lisa Schwam) (Chapin, Benjamin) (Entered: 07/28/2014)
07/28/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/24/2014. (Court Reporter Lisa Schwam) (Chapin, Benjamin) (Entered: 07/28/2014)
07/30/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/29/2014. (Court Reporter Nicole Canales) (Chapin, Benjamin) (Entered: 07/30/2014)
07/31/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/30/2014. (Court Reporter Nicole Canales.) (King, Alyssa) (Entered: 07/31/2014)
08/01/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 7/31/2014 (Court Reporter Nicole Canales.) (Chapin, Benjamin) (Entered: 08/01/2014)
08/05/2014	Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/4/2014. The court ordered that the courtroom would be sealed for the testimony of Pamela Codispoti and Scott Miller

		on Wednesday, August 6, 2014, and potentially continuing into Thursday, August 7, 2014, for good cause shown. (Court Reporter Sherry Bryant) (Chapin, Benjamin) (Entered: 08/05/2014)
08/06/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/5/2014. (Court Reporter Sherry Bryant) (Chapin, Benjamin) (Entered: 08/06/2014)
08/07/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/6/2014. (Court Reporter Sherry Bryant) (Chapin, Benjamin) (Entered: 08/07/2014)
08/11/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/7/2014. (King, Alyssa) (Entered: 08/11/2014)
08/12/2014	584	Redaction of 538 Transcript,, (Tolkin, Ronald) (Entered: 08/12/2014)
08/12/2014	585	Redaction of 539 Transcript,, (Tolkin, Ronald) (Entered: 08/12/2014)
08/12/2014	586	Redaction of 540 Transcript,, (Tolkin, Ronald) (Entered: 08/12/2014)

08/12/2014	587	Redaction of 541 Transcript,, (Tolkin, Ronald) (Entered: 08/12/2014)
08/13/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/11/2014. (Court Reporter Allan Sherman) (Chapin, Benjamin) (Entered: 08/13/2014)
08/14/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/13/2014 (Court Reporter Allan Sherman) (Chapin, Benjamin) (Entered: 08/14/2014)
08/15/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial held on 8/15/2014 (Court Reporter Anthony Mancuso) (Chapin, Benjamin) (Entered: 08/15/2014)
08/17/2014	590	STIPULATION Regarding Non-Standard Card Acceptance Agreements and Merchant Acceptance of American Express by United States of America (Ewalt, Andrew) (Entered: 08/17/2014)
08/19/2014		Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Bench Trial concluded on 8/18/2014. The parties' proposed findings of fact and conclusions of law, as well

as their post-trial legal briefs, shall be filed by September 18, 2014. Closing arguments are scheduled for October 9, 2014, at 10:00 a.m. in Courtroom 4D. (Court Reporter Holly Driscoll) (Chapin, Benjamin) (Entered: 08/19/2014)

09/08/2014 595 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on August 4, 2014, before Judge Nicholas G. Garaufis. Court Reporter/Transcriber Sherry Bryant, Telephone number 718-613-2636. Email address: sbryant102@verizon.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/9/2014. Release of Transcript Restriction set for 12/8/2014. (Bryant, Sherry) (Entered: 09/08/2014)

09/08/2014 596 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on August 5, 2014, before Judge Nicholas G. Garaufis. Court Reporter/Transcriber Sherry Bryant, Telephone number 718-613-2636. Email address:

sbryant102@verizon.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/9/2014. Release of Transcript Restriction set for 12/8/2014. (Bryant, Sherry) (Entered: 09/08/2014)

09/08/2014 597 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on August 6, 2014, before Judge Nicholas G. Garaufis. Court Reporter/Transcriber Sherry Bryant, Telephone number 718-613-2636. Email address: sbryant102@verizon.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/9/2014. Release of Transcript Restriction set for 12/8/2014. (Bryant, Sherry) (Entered: 09/08/2014)

09/08/2014 598 NOTICE OF FILING OF

		OFFICIAL TRANSCRIPT of Proceedings held on August 7, 2014, before Judge Nicholas G. Garaufis. Court Reporter/Transcriber Sherry Bryant, Telephone number 718-613-2636. Email address: sbryant102@verizon.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/29/2014. Redacted Transcript Deadline set for 10/9/2014. Release of Transcript Restriction set for 12/8/2014. (Bryant, Sherry) (Entered: 09/08/2014)
09/18/2014	600	MOTION for Leave to Electronically File Document under Seal by United States of America. (Attachments: # 1 Plaintiffs' Proposed Findings of Fact) (Carter, Thomas) (Entered: 09/18/2014)
09/18/2014	601	MOTION for Leave to Electronically File Document under Seal by United States of America. (Attachments: # 1 Plaintiffs' Post-Trial Memorandum of Law) (Carter, Thomas) (Entered: 09/18/2014)
09/18/2014	602	TRIAL BRIEF Plaintiffs' Proposed Conclusions of Law by United

		States of America (Carter, Thomas) (Entered: 09/18/2014)
09/18/2014	603	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Defendants' Post-Trial Brief (Sealed)) (Chesler, Evan) (Entered: 09/18/2014)
09/19/2014	604	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Defendants' Proposed Findings of Fact and Conclusions of Law (Sealed)) (Chesler, Evan) (Entered: 09/19/2014)
09/26/2014	605	REDACTION ("Defendants' Post-Trial Brief")[Public Version] by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 09/26/2014)
09/26/2014	606	REDACTION of Plaintiffs' Post-Trial Memorandum [Public Version] by United States of America (Carter, Thomas) (Entered: 09/26/2014)
10/14/2014		Minute Entry for proceedings held

		before Judge Nicholas G. Garaufis: Closing Arguments held on 10/09/2014. The parties' presentations were marked for identification as detailed on the record. (Court Reporter Victoria Torres-Butler) (Chapin, Benjamin) (Entered: 10/14/2014)
10/16/2014	611	REDACTION of Plaintiffs' Proposed Findings of Fact [Public Version] by United States of America (Carter, Thomas) (Entered: 10/16/2014)
10/28/2014	612	REDACTION ("Defendants' Proposed Findings of Fact and Conclusions of Law")[Public Version] by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 10/28/2014)
11/07/2014	613	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07-28-14, before Judge Garaufis. Court Reporter/Transcriber Nicole Canales, Telephone number 718-613-2509. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File

redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/28/2014. Redacted Transcript Deadline set for 12/8/2014. Release of Transcript Restriction set for 2/5/2015. (Canales, Nicole) (Entered: 11/07/2014)

11/07/2014 614 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07-29-14, before Judge Garaufis. Court Reporter/Transcriber Nicole Canales, Telephone number 718-613-2509. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/28/2014. Redacted Transcript Deadline set for 12/8/2014. Release of Transcript Restriction set for 2/5/2015. (Canales, Nicole) (Entered: 11/07/2014)

11/07/2014 615 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07-30-14,

before Judge Garaufis. Court Reporter/Transcriber Nicole Canales, Telephone number 718-613-2509. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/28/2014. Redacted Transcript Deadline set for 12/8/2014. Release of Transcript Restriction set for 2/5/2015. (Canales, Nicole) (Entered: 11/07/2014)

11/07/2014 616 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07-31-14, before Judge Garaufis. Court Reporter/Transcriber Nicole Canales, Telephone number 718-613-2509. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript"

located under "Other Filings - Other Documents". Redaction Request due 11/28/2014. Redacted Transcript Deadline set for 12/8/2014. Release of Transcript Restriction set for 2/5/2015. (Canales, Nicole) (Entered: 11/07/2014)

02/19/2015 619 DECISION (Findings of Fact and Conclusions of Law). For the reasons set forth in the accompanying Decision, the court concludes that Plaintiffs have proven by a preponderance of the evidence that the challenged restraints constitute an unlawful restraint on trade under Section 1 of the Sherman Act. Following briefing by the parties in accordance with the Scheduling Order issued contemporaneously with this Decision, the court will separately issue a Remedial Order and a Judgment after it determines the appropriate remedy. Ordered by Judge Nicholas G. Garaufis on 2/19/2015. (Day, Lori) (Entered: 02/19/2015)

02/19/2015 620 SCHEDULING ORDER: So that final judgment can be timely entered in this case, the court DIRECTS the parties to submit a joint, Proposed Remedial Order for the court's review that is consistent with the analysis set forth in the

Decision. The proposed injunction shall be filed within thirty (30) days of the date of entry of this Scheduling Order and shall be accompanied by a joint memorandum addressing why the Proposed Remedial Order is appropriate in this case. The parties' participation in negotiating and proposing an appropriate remedy shall not prejudice or waive any of their rights, including their rights to present arguments on appeal. To the extent the parties are unable to agree on a Proposed Remedial Order--and the court sincerely hopes they are able to agree--they shall file a joint submission indicating where the parties are in agreement and where the parties are not in agreement, and each party shall file a supporting memorandum explaining why the court should adopt its proposed remedy. If necessary, the court will itself craft an injunction that implements the Decision and renders American Express's contractual provisions compliant with the antitrust laws. Ordered by Judge Nicholas G. Garaufis on 2/19/2015. (Goldstein, Ryan) (Entered: 02/19/2015)

03/23/2015 621 MEMORANDUM in Support re 620

Scheduling Order,,,,, Joint Submission As To Remedy filed by United States of America. (Attachments: # 1 Appendix Appendix 1 to Joint Submission As To Remedy, # 2 Appendix Appendix 2 to Joint Submission As To Remedy, # 3 Appendix Appendix 3 to Joint Submission As To Remedy) (Hamer, Mark) (Entered: 03/23/2015)

03/23/2015 622 MEMORANDUM in Support re 620 Scheduling Order,,,,, Plaintiffs' Memorandum In Support of Proposed Final Judgment and Remedial Order As To The American Express Defendants filed by United States of America. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Hamer, Mark) (Entered: 03/23/2015)

03/23/2015 623 MEMORANDUM in Support re 620 Scheduling Order,,,,, ("Memorandum of Law in Support of Defendants' Proposed Final Judgment and Order Entering Injunction") [Public Redacted Version] filed by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E) (Chesler, Evan) (Entered: 03/23/2015)

03/23/2015	624	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Memorandum of Law in Support of Defendants' Proposed Final Judgment and Order Entering Injunction (Confidential Version)) (Chesler, Evan) (Entered: 03/23/2015)
03/25/2015	625	Letter MOTION for Leave to File to submit a reply to the Government's Memorandum in Support of Proposed Final Judgment and Remedial Order as to the American Express Defendants. (Dkt. No. 622.) by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 03/25/2015)
03/25/2015		ORDER granting in part American Express's 625 Motion for Leave to File Reply. The motion is GRANTED IN PART. American Express is granted leave to file a reply of not more than 20 pages to the Government's Memorandum in Support of Proposed Final Judgment and Remedial Order, by no later than April 1, 2015. The Government is sua sponte granted leave to file a reply, if it chooses, of not more than 20 pages to American

Express's Memorandum of Law in Support of Defendants' Proposed Final Judgment and Order Entering Injunction, by no later than April 1, 2015. No sur-replies will be permitted. Ordered by Judge Nicholas G. Garaufis on 3/25/2015. (Goldstein, Ryan) (Entered: 03/25/2015)

04/01/2015 626 MEMORANDUM in Support of Plaintiffs' Proposed Final Judgment and Remedial Order filed by United States of America. (Attachments: # 1 Exhibit 1) (Vardner, Joseph) (Entered: 04/01/2015)

04/01/2015 627 MEMORANDUM in Support ("Reply Memorandum Of Law In Further Support Of Defendants' Proposed Final Judgment And Order Entering Injunction") filed by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 04/01/2015)

04/10/2015 631 NOTICE by Non-Party Merchants Comments Concerning Proposed Remedy (Shinder, Jeffrey) (Entered: 04/10/2015)

04/15/2015 634 NOTICE by Class Plaintiffs in 11-md-2221 Class Plaintiffs' Submission with Respect to the Government's Proposed Judgment (Reinhardt, Mark) (Entered:

04/15/2015)

04/15/2015 635 NOTICE by Southwest Airlines Co. Regarding Proposed Relief (Atkins, Alden) (Entered: 04/15/2015)

04/17/2015 636 REPLY in Support Plaintiffs' Memorandum in Reply to Non-Party Filings Regarding Remedy filed by United States of America. (Vardner, Joseph) (Entered: 04/17/2015)

04/17/2015 637 NOTICE by American Express Company, American Express Travel Related Services Company, Inc. re 620 Scheduling Order,,,,, ("Response Of the American Express Defendants To Non-Party Comments On The Proposed Final Judgment And Order Entering Injunction") (Chesler, Evan) (Entered: 04/17/2015)

04/30/2015 638 ORDER ENTERING PERMANENT INJUNCTION AS TO THE AMERICAN EXPRESS DEFENDANTS. See attached. Ordered by Judge Nicholas G. Garaufis on 4/30/2015. (Goldstein, Ryan) (Entered: 04/30/2015)

04/30/2015 639 MEMORANDUM. As set forth in the attached, and as embodied in the court's separate Order Entering Permanent Injunction as to the American Express Defendants, the

court adopts many of the proposals made by the Government with respect to the proper scope of injunctive relief in this case, with some exceptions, and with certain modifications. Ordered by Judge Nicholas G. Garaufis on 4/30/2015. (Goldstein, Ryan) (Entered: 04/30/2015)

04/30/2015 640 VACATED JUDGMENT in favor of State of Arizona, State of Connecticut, State of Idaho, State of Illinois, State of Iowa, State of Maryland, State of Michigan, State of Missouri, State of Montana, State of Nebraska, State of New Hampshire, State of Ohio, State of Rhode Island, State of Tennessee, State of Texas, State of Utah, State of Vermont, United States of America against American Express Company, American Express Travel Related Services Company, Inc. Ordered by Judge Nicholas G. Garaufis on 4/30/2015. (Goldstein, Ryan) (Main Document 640 replaced on 1/13/2017) (Lee, Tiffeny). See USCA,2nd Ct. Mandate, Document 698 (Entered: 04/30/2015)

05/01/2015 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") by American Express Company, American

		Express Travel Related Services Company, Inc. (Attachments: # 1 Proposed Order) (Chesler, Evan) (Entered: 05/01/2015)
05/01/2015	642	MEMORANDUM in Support re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") ("Defendants' Memorandum Of Law In Support Of Defendants' Motion To Stay Pending Appeal") filed by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 05/01/2015)
05/11/2015	654	RESPONSE in Opposition re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") filed by Home Depot U.S.A., Inc. (Lowrey, Frank) (Entered: 05/11/2015)
05/11/2015	655	RESPONSE in Opposition re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") filed by Southwest Airlines Co.. (Atkins, Alden) (Entered: 05/11/2015)
05/11/2015	656	MOTION to Seal Document, MOTION for Leave to Electronically File Document under Seal Individual Merchant Plaintiffs' Brief in Opposition to Amex's Motion to Stay Pending Appeal by

		Individual Plaintiffs in 11-md-2221. (Attachments: # 1 Memorandum in Opposition, # 2 Exhibit 1 - US v. Amex Case, # 3 Exhibit 2 - Walgreens Declaration, # 4 Exhibit 3 - Kroger Declaration, # 5 Exhibit 4 - Burlington Declaration, # 6 Exhibit 5 - Spirit Declaration) (Arnold, Richard) (Entered: 05/11/2015)
05/11/2015	657	RESPONSE in Opposition re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") filed by Sears Holdings Corporation. (Attachments: # 1 Exhibit 1., # 2 Exhibit 2., # 3 Exhibit 3., # 4 Exhibit 4., # 5 Exhibit 5.) (Shinder, Jeffrey) (Entered: 05/11/2015)
05/11/2015	658	RESPONSE in Opposition re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") Memorandum of Law filed by United States of America. (Vardner, Joseph) (Entered: 05/11/2015)
05/13/2015	659	STIPULATION regarding Plaintiff States Fees and Costs by State of Ohio (Gentile, Mitchell) (Entered: 05/13/2015)
05/14/2015	660	ORDER re: parties' 659 stipulation regarding Plaintiff States' fees and costs. The stipulation is so-ordered.

		Ordered by Judge Nicholas G. Garaufis on 5/14/2015. (Goldstein, Ryan) (Entered: 05/14/2015)
05/15/2015	661	REPLY in Support re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") ("Defendants' Reply Memorandum In Support Of Defendants' Motion To Stay Pending Appeal") filed by American Express Company, American Express Travel Related Services Company, Inc. (Chesler, Evan) (Entered: 05/15/2015)
05/15/2015	662	AFFIDAVIT/DECLARATION in Support re 641 MOTION to Stay re 640 Judgment,, ("Notice Of Defendants' Motion To Stay Pending Appeal") ("Declaration Of Kevin J. Orsini In Support Of Defendants' Reply In Support Of Defendants' Motion To Stay Pending Appeal") filed by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3) (Chesler, Evan) (Entered: 05/15/2015)
05/19/2015	663	ORDER denying Defendants' 641 Motion to Stay Pending Appeal. As set forth in the accompanying Memorandum and Order,

		Defendants' motion to stay pending appeal is DENIED. However, in order to permit Defendants to seek a stay pending appeal from the Second Circuit, the court sua sponte enters a temporary stay of the Permanent Injunction for a period of 30 days from the date of entry of this Memorandum and Order. Ordered by Judge Nicholas G. Garaufis on 5/19/2015. (Goldstein, Ryan) (Entered: 05/19/2015)
05/21/2015	664	NOTICE OF APPEAL as to 640 Judgment,, 638 Permanent Injunction, 619 Findings of Fact & Conclusions of Law,, 639 Memorandum & Opinion, by American Express Company, American Express Travel Related Services Company, Inc. Filing fee $ 505, receipt number 0207-7759546. (Chesler, Evan) (Entered: 05/21/2015)
05/21/2015		Electronic Index to Record on Appeal sent to US Court of Appeals. 664 Notice of Appeal, Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (McGee, Mary Ann) (Entered: 05/21/2015)

05/29/2015 665 ORDER of USCA as to 664 Notice of Appeal, filed by American Express Company, American Express Travel Related Services Company, Inc. IT IS HEREBY ORDERED that the Appellants motion for a stay of the permanent injunction, issued by the District Court on April 30, 2015, pending the Courts determination of this appeal is REFERRED to a three-judge motions panel sitting on June 16, 2015Certified Copy issued 5/29/15. (McGee, Mary Ann) (Entered: 05/29/2015)

06/09/2015 666 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 7-21-2015, before Judge Garaufis. Court Reporter/Transcriber Lisa Schwam, Telephone number 718-613-2268. Email address: LisaSchwam@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 6/30/2015. Redacted Transcript Deadline set

for 7/10/2015. Release of Transcript Restriction set for 9/7/2015. (Schwam, Lisa) (Entered: 06/09/2015)

06/09/2015 667 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 7-22-2014, before Judge Garaufis. Court Reporter/Transcriber Lisa Schwam, Telephone number 718-613-2268. Email address: LisaSchwam@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 6/30/2015. Redacted Transcript Deadline set for 7/10/2015. Release of Transcript Restriction set for 9/7/2015. (Schwam, Lisa) (Entered: 06/09/2015)

06/09/2015 668 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 7-23-2014, before Judge Garaufis. Court Reporter/Transcriber Lisa Schwam, Telephone number 718-613-2268.

Email address: LisaSchwam@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 6/30/2015. Redacted Transcript Deadline set for 7/10/2015. Release of Transcript Restriction set for 9/7/2015. (Schwam, Lisa) (Entered: 06/09/2015)

06/09/2015 669 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 7-24-2014, before Judge Garaufis. Court Reporter/Transcriber Lisa Schwam, Telephone number 718-613-2268. Email address: LisaSchwam@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request -

Transcript" located under "Other Filings - Other Documents". Redaction Request due 6/30/2015. Redacted Transcript Deadline set for 7/10/2015. Release of Transcript Restriction set for 9/7/2015. (Schwam, Lisa) (Entered: 06/09/2015)

06/09/2015 670 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on August 18, 2014, before Judge Garaufis. Court Reporter/Transcriber H. Driscoll, Telephone number 718-613-2274. Email address: hdrisc@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 6/30/2015. Redacted Transcript Deadline set for 7/10/2015. Release of Transcript Restriction set for 9/7/2015. (Driscoll, Holly) (Entered: 06/09/2015)

06/10/2015 671 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08/14/2014,

before Judge Garaufis. Court Reporter/Transcriber Anthony Mancuso, Telephone number 718-613-2419. Email address: anthonymancuso65@msn.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 7/1/2015. Redacted Transcript Deadline set for 7/13/2015. Release of Transcript Restriction set for 9/8/2015. (Mancuso, Anthony) (Entered: 06/10/2015)

06/10/2015 672 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08-13-2014, before Judge Nicholas G Garaufis. Court Reporter/Transcriber Allan R Sherman, Telephone number 718-613-2529. Email address: asher99983@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that

date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 7/1/2015. Redacted Transcript Deadline set for 7/13/2015. Release of Transcript Restriction set for 9/8/2015. (Sherman, Allan) (Entered: 06/10/2015)

06/10/2015 673 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08-11-2014, before Judge Nicholas G Garaufis. Court Reporter/Transcriber Allan R Sherman, Telephone number 718-613-2529. Email address: asher99983@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 7/1/2015. Redacted Transcript Deadline set for 7/13/2015. Release of Transcript Restriction set for 9/8/2015. (Sherman, Allan) (Entered:

06/10/2015)

06/10/2015 674 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/07/2014, before Judge Garaufis. Court Reporter/Transcriber Ron Tolkin. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 675 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/08/2014, before Judge Garaufis. Court Reporter/Transcriber Ron Tolkin. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File

redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 676 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/09/2014, before Judge Garaufis. Court Reporter/Transcriber Ron Tolkin. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 677 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/10/2014, before Judge Garaufis. Court

Reporter/Transcriber Ron Tolkin. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 678 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08/04/2014, before Judge Garaufis. Court Reporter/Transcriber Sherry Bryant. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript

Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 679 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08/06/2014, before Judge Garaufis. Court Reporter/Transcriber Sherry Bryant. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 680 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08/07/2014, before Judge Garaufis. Court Reporter/Transcriber Sherry Bryant. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the

deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 681 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 08/11/2014, before Judge Garaufis. Court Reporter/Transcriber Allan Sherman. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 682 NOTICE OF FILING OF

OFFICIAL TRANSCRIPT of Proceedings held on 08/13/2014, before Judge Garaufis. Court Reporter/Transcriber Allan Sherman. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 683 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/14/2014, before Judge Garaufis. Court Reporter/Transcriber Richard Barry. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript"

located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) Modified on 6/10/2015 (Mahoney, Brenna). (Entered: 06/10/2015)

06/10/2015 684 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/15/2014, before Judge Garaufis. Court Reporter/Transcriber Richard Barry. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) Modified on 6/10/2015 (Mahoney, Brenna). (Entered: 06/10/2015)

06/10/2015 685 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/16/2014, before Judge Garaufis. Court

Reporter/Transcriber Richard Barry. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)

06/10/2015 686 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 07/17/2014, before Judge Garaufis. Court Reporter/Transcriber Richard Barry. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". (Redaction Request due 7/1/2015., Redacted Transcript

		Deadline set for 7/13/2015., Release of Transcript Restriction set for 9/8/2015.) (Mahoney, Brenna) (Entered: 06/10/2015)
06/19/2015	687	ORDER of USCA as to 664 Notice of Appeal, filed by American Express Company, American Express Travel Related Services Company, Inc. Appellants move for a stay pending appeal of the District Court's injunction, and Movants' request leave to file, as amicus curiae, memoranda in opposition to Appellants motion to stay. Appellants motion is DENIED. It is further ORDERED thatMovants motions are DENIED as moot. It is also Ordered that the consideration of this appeal is expedited, on a schedule to be determined by the Clerk of Court. Certified Copy Issued: 6/16/15. (McGee, Mary Ann) (Entered: 06/19/2015)
11/10/2015	688	Letter MOTION for Leave to File Motion to Enforce Compliance with Permanent Injunction and Set Briefing Schedule by United States of America. (Matelson, Bennett) (Entered: 11/10/2015)
11/10/2015		ORDER granting Government's 688 Motion for Leave to File. The motion is GRANTED, and the court so-orders the parties' agreed-upon

briefing schedule. The parties shall limit their opening submissions to ten pages double-spaced, and the Government shall limit its reply submission to five pages double-spaced. The parties are encouraged to address the issues succinctly and with brevity. Ordered by Judge Nicholas G. Garaufis on 11/10/2015. (Goldstein, Ryan) (Entered: 11/10/2015)

11/16/2015 689 MOTION for Leave to Electronically File Document under Seal Motion to Enforce Permanent Injunction by United States of America. (Attachments: # 1 Notice of Motion, # 2 Memorandum in Support, # 3 Declaration Matelson Declaration, # 4 Exhibit Exhibit A, # 5 Exhibit Exhibit B, # 6 Exhibit Exhibit C, # 7 Exhibit Exhibit D) (Matelson, Bennett) (Entered: 11/16/2015)

11/18/2015 690 MOTION for Leave to Electronically File Document under Seal Letter to Hon. Nicholas G. Garaufis by Kevin J. Orsini and Exhibits by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Letter to Hon. Nicholas G. Garaufis from Kevin J. Orsini, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C) (Orsini, Kevin) (Entered: 11/18/2015)

11/23/2015	691	REDACTION of Plaintiffs' Memorandum in Support of Motion to Enforce Permanent Injunction [Public Version] by United States of America (Matelson, Bennett) (Entered: 11/23/2015)
11/23/2015	692	MOTION for Leave to Electronically File Document under Seal by American Express Company, American Express Travel Related Services Company, Inc. (Attachments: # 1 Memorandum in Opposition Defendants' Memorandum of Law in Opposition to the Government's Motion to Enforce Permanent Injunction, # 2 Declaration Declaration of Erin K. McConnell, # 3 Exhibit Exhibit 1 to Declaration of Erin K. McConnell, # 4 Exhibit Exhibit 2 to Declaration of Erin K. McConnell, # 5 Exhibit Exhibit 3 to Declaration of Erin K. McConnell) (Orsini, Kevin) (Entered: 11/23/2015)
12/01/2015	693	REPLY in Support of Motion to Enforce Permanent Injunction filed by United States of America. (Matelson, Bennett) (Entered: 12/01/2015)
12/07/2015	694	REDACTION of Defendants' Memorandum of Law in Opposition to the Government's Motion to Enforce Permanent Injunction by

American Express Company, American Express Travel Related Services Company, Inc. (Orsini, Kevin) (Entered: 12/07/2015)

12/07/2015 695 DECLARATION of Erin K. McConnell in Support of Defendants' Memorandum of Law in Opposition to the Government's Motion to Enforce Permanent Injunction [Public Version] by American Express Company, American Express Travel Related Services Company, Inc. (Orsini, Kevin) (Entered: 12/07/2015)

12/15/2015 696 ORDER re: Plaintiffs' Motion to Enforce Permanent Injunction. For the reasons set forth in the accompanying Order, the court rejects Defendants' interpretation of Paragraph III.B.2 with respect to Defendants' existing co-brand merchants, GRANTS Plaintiffs' motion to enforce the terms of the Permanent Injunction with respect to those merchants, and DIRECTS Defendants promptly to provide proper notice to their co-brand merchants consistent with this Order. Ordered by Judge Nicholas G. Garaufis on 12/15/2015. (Goldstein, Ryan) (Entered: 12/15/2015)

12/18/2015 697 ORDER of USCA as to 664 Notice of

	Appeal, filed by American Express Company, American Express Travel Related Services Company, Inc. Pending decision in United States v. Am. Express Co., No. 15-1672, the Court on its own motion hereby orders a temporary stay of the Order of the United States District Court for the Eastern District of New York dated April 30, 2015 entering a Permanent Injunction as to the American Express Defendants in United States v. Am. Express Co., No. 10-cv-4496 (NGG) (RER). See Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). The Court further orders a temporary stay in the District Court of any and all matters related to this litigation. Certified Copy issued: 12/18/15. (McGee, Mary Ann) (Entered: 12/18/2015)
09/07/2016	ORDER granting 689 Motion for Leave to Electronically File Document under Seal. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 9/7/2016. (Vertus, Miriam) (Entered: 09/07/2016)
09/07/2016	ORDER granting 690 Motion for Leave to Electronically File Document under Seal; granting 692 Motion for Leave to Electronically File Document under Seal. Ordered by Magistrate Judge Ramon E.

		Reyes, Jr on 9/7/2016. (Vertus, Miriam) (Entered: 09/07/2016)
01/12/2017	698	MANDATE of USCA as to 664 Notice of Appeal, filed by American Express Company, American Express Travel Related Services Company, Inc. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the District Court's judgment is REVERSED and the case is REMANDED with instructions to enter judgment in favor of Amex. Issued as Mandate: 1/12/17. USCA #15-1672. (Attachments: # 1 Opinion) (McGee, Mary Ann) (Entered: 01/12/2017)
01/20/2017	699	ORDER: In accordance with the mandate of the United States Court of Appeals for the Second Circuit, issued January 12, 2017, the court dismisses the Amended Complaint. (See Mandate(Dkt. 698).) The Clerk of Court is respectfully DIRECTED to enter judgment for Defendants. So Ordered by Judge Nicholas G. Garaufis on 1/19/2017. (fwd'd for jgm) (Lee, Tiffeny) (Entered: 01/20/2017)
01/25/2017	700	CLERK'S JUDGMENT that in accordance with the mandate of the United States Court of Appeals for the Second Circuit, issued January 12, 2017, the Court dismisses the

Amended Complaint; (See Mandate Dkt. 698).); and that judgment is hereby entered for Defendants American Express Company and American Express Travel Related Services Company, Inc. Signed Douglas C. Palmer, Clerk of Court by Janet Hamilton, Deputy Clerk on 1/24/2017. (Lee, Tiffeny) (Entered: 01/25/2017)

RELEVANT DOCKET ENTRIES

United States of America, et al. v. American Express Company, et al.,
U.S. Court of Appeals for the Second Circuit,
Case No. 15-1672

05/21/2015	2	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellants American Express Company and American Express Travel Related Services Company, Inc., FILED. [1516695] [15-1672] [Entered: 05/22/2015 01:53 PM]
05/21/2015	4	DISTRICT COURT ORDER, dated 02/19/2015, RECEIVED. [1516707] [15-1672] [Entered: 05/22/2015 02:01 PM]
05/21/2015	5	DISTRICT COURT ORDER, dated 04/30/2015, RECEIVED. [1516710] [15-1672] [Entered: 05/22/2015 02:02 PM]
05/21/2015	6	DISTRICT COURT MEMORANDUM, dated 04/30/2015, RECEIVED. [1516712] [15-1672] [Entered: 05/22/2015 02:03 PM]
05/21/2015	7	DISTRICT COURT JUDGMENT, dated 04/30/2015, RECEIVED. [1516713] [15-1672] [Entered: 05/22/2015 02:04 PM]
05/21/2015	8	ELECTRONIC INDEX, in lieu of

		record, FILED. [1516714] [15-1672] [Entered: 05/22/2015 02:04 PM]
05/26/2015	17	EMERGENCY MOTION, to stay, on behalf of Appellant American Express Travel Related Services Company, Inc. and American Express Company, FILED. Service date 05/26/2015 by CM/ECF. [1517914] [15-1672]--[Edited 05/27/2015 by YL] [Entered: 05/26/2015 06:37 PM]
05/29/2015	32	CERTIFIED ORDER, dated 05/29/2015, to EDNY(Brooklyn), ISSUED. [1520968] [15-1672] [Entered: 05/29/2015 04:19 PM]
06/05/2015	58	OPPOSITION TO MOTION, to stay [17], on behalf of Appellee United States of America, FILED. Service date 06/05/2015 by CM/ECF. [1526011] [15-1672] [Entered: 06/05/2015 02:29 PM]
06/11/2015	96	REPLY TO OPPOSITION [58], on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 06/11/2015 by CM/ECF. [1530967][96] [15-1672] [Entered: 06/11/2015 07:29 PM]
06/16/2015	104	MOTION ORDER, denying motion to stay pending appeal

		[17] filed by Appellants American Express Company and American Express Travel Related Services Company, Inc.; denying as moot motions to file amicus curiae brief [79] [80], [89], by GC, DAL, GEL, FILED. [1533683][104] [15-1672] [Entered: 06/16/2015 02:49 PM]
06/16/2015	105	CERTIFIED ORDER, dated 06/16/2015, to United States District Court for the Eastern District of New York, ISSUED. [1533688] [15-1672]--[Edited 06/18/2015 by YL] [Entered: 06/16/2015 02:52 PM]
08/03/2015	128	SPECIAL APPENDIX, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 08/03/2015 by CM/ECF. [1568103] [15-1672] [Entered: 08/03/2015 09:43 PM]
08/03/2015	140	SEALED PAGE PROOF BRIEF, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. [1573276] [15-1672] [Entered: 08/11/2015 09:59 AM]
08/05/2015	133	PAGE PROOF BRIEF, on behalf of Appellant American Express Company and American Express

		Travel Related Services Company, Inc., FILED. Service date 08/05/2015 by CM/ECF. [1569764] [15-1672] [Entered: 08/05/2015 01:06 PM]
08/10/2015	135	AMICUS BRIEF, on behalf of Joseph Gregory Sidak, Robert D Willig, David J Teece, Keith Hylton, FILED. Service date 08/10/2015 by CM/ECF. [1573083] [15-1672] [Entered: 08/10/2015 06:34 PM]
09/14/2015	166	AMICUS BRIEF, Ahold U.S.A., Inc., Albertsons LLC, BI-LO LLC, CVS Health, Inc., H.E. Butt Grocery Co., HyVee, Inc., Meijer, Inc., Publix Super Markets, Inc., Raley's, Rite-Aid Corp., Safeway Inc., SuperValu, Inc., The Great Atlantic & Pacific Tea Company, Inc., The Kroger Co. and Walgreen Co., FILED. Service date 09/14/2015 by CM/ECF. [1597566] [15-1672] [Entered: 09/14/2015 02:09 PM]
09/14/2015	171	PAGE PROOF BRIEF, on behalf of Appellee United States of America, FILED. Service date 09/14/2015 by 3rd party, CM/ECF. [1597955] [15-1672] [Entered: 09/14/2015 04:58 PM]
09/14/2015	190	SEALED BRIEF, on behalf of Appellee United States of

America, FILED. [1601519] [15-1672] [Entered: 09/18/2015 09:47 AM]

09/17/2015 186 CURED DEFECTIVE BRIEF [176], [171], on behalf of Appellee United States of America, FILED. [1600631] [15-1672] [Entered: 09/17/2015 10:01 AM]

09/17/2015 187 AMICUS BRIEF, Home Depot USA, Inc., FILED. Service date 09/14/2015 by CM/ECF. [1601108] [15-1672] [Entered: 09/17/2015 03:04 PM]

09/18/2015 195 AMICUS BRIEF, on behalf of Movant Ahold U.S.A., Inc., Albertsons LLC, BI-LO LLC, CVS Health, Inc., H.E. Butt Grocery Co., HyVee, Inc., Meijer, Inc., Publix Super Markets, Inc., Raley's, Rite-Aid Corp., Safeway Inc., SuperValu, Inc., The Great Atlantic & Pacific Tea Company, Inc., The Kroger Co. and Walgreen Co., , FILED. Service date 09/18/2015 by CM/ECF. [1601961] [15-1672] [Entered: 09/18/2015 01:05 PM]

09/21/2015 219 MOTION TO FILE AMICUS CURIAE BRIEF, on behalf of Non-Party Filer(s), FILED. Service date09/21/2015 by email. [1603543] [15-1672] [Entered: 09/21/2015 06:05 PM]

10/02/2015	279	SEALED DEFERRED APPENDIX, Volume 5 of 10, on behalf of Appellee United States of America, FILED. [1626460] [15-1672] [Entered: 10/23/2015 11:39 AM]
10/05/2015	245	PAGE PROOF REPLY BRIEF, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/05/2015 by CM/ECF. [1613242] [15-1672] [Entered: 10/05/2015 07:48 PM]
10/15/2015	248	DEFERRED APPENDIX, volume 1 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620579] [15-1672] [Entered: 10/15/2015 09:24 PM]
10/15/2015	249	DEFERRED APPENDIX, volume 2 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620580] [15-1672] [Entered: 10/15/2015 09:27 PM]
10/15/2015	250	DEFERRED APPENDIX, volume 3 of 10, on behalf of Appellant American Express Company and

		American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620581] [15-1672] [Entered: 10/15/2015 09:30 PM]
10/15/2015	251	DEFERRED APPENDIX, volume 4 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620582] [15-1672] [Entered: 10/15/2015 09:32 PM]
10/15/2015	252	DEFERRED APPENDIX, volume 5 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620583] [15-1672] [Entered: 10/15/2015 09:33 PM]
10/15/2015	253	DEFERRED APPENDIX, volume 6 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620584] [15-1672] [Entered: 10/15/2015 09:35 PM]
10/15/2015	254	DEFERRED APPENDIX, volume 7 of 10, on behalf of Appellant American Express Company and American Express Travel Related

		Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620585] [15-1672] [Entered: 10/15/2015 09:37 PM]
10/15/2015	255	DEFERRED APPENDIX, volume 8 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620586] [15-1672] [Entered: 10/15/2015 09:38 PM]
10/15/2015	256	DEFERRED APPENDIX, volume 9 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620587] [15-1672] [Entered: 10/15/2015 09:40 PM]
10/15/2015	257	DEFERRED APPENDIX, volume 10 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/15/2015 by CM/ECF. [1620588] [15-1672] [Entered: 10/15/2015 09:43 PM]
10/15/2015	274	SEALED DEFFERRED APPENDIX, Volume 1 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services

		Company, Inc., FILED. [1626306] [15-1672] [Entered: 10/23/2015 10:27 AM]
10/15/2015	275	SEALED DEFFERRED APPENDIX, Volume 2 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626452] [15-1672] [Entered: 10/23/2015 11:35 AM]
10/15/2015	280	SEALED DEFFERRED APPENDIX, Volume 3 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626461] [15-1672] [Entered: 10/23/2015 11:39 AM]
10/15/2015	276	SEALED DEFFERRED APPENDIX, Volume 4 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626453] [15-1672] [Entered: 10/23/2015 11:36 AM]
10/15/2015	277	SEALED DEFFERRED APPENDIX, Volume 5 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626454] [15-

		1672] [Entered: 10/23/2015 11:37 AM]
10/15/2015	285	SEALED DEFFERRED APPENDIX, Volume 6 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626474] [15-1672] [Entered: 10/23/2015 11:43 AM]
10/15/2015	281	SEALED DEFFERRED APPENDIX, Volume 7 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626462] [15-1672] [Entered: 10/23/2015 11:40 AM]
10/15/2015	282	SEALED DEFFERRED APPENDIX, Volume 8 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626463] [15-1672] [Entered: 10/23/2015 11:40 AM]
10/15/2015	283	SEALED DEFFERRED APPENDIX, Volume 9 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626465] [15-1672] [Entered: 10/23/2015 11:41

		AM]
10/15/2015	284	SEALED DEFFERRED APPENDIX, Volume 10 of 10, on behalf of Appellant American Express Company and American Express Travel Related Services Company, FILED. [1626467] [15-1672] [Entered: 10/23/2015 11:41 AM]
10/19/2015	262	FRAP 28(j) LETTER, dated 10/16/2015, on behalf of Appellee United States of America, RECEIVED. Service date 10/16/2015 by CM/ECF. [1622359] [15-1672] [Entered: 10/19/2015 01:50 PM]
10/19/2015	265	FRAP 28(j) LETTER, dated 10/19/2015, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., RECEIVED. Service date 10/19/2015 by CM/ECF. [1622900] [15-1672] [Entered: 10/19/2015 08:34 PM]
10/21/2015	267	FINAL FORM BRIEF, on behalf of Appellee United States of America, FILED. Service date 10/21/2015 by CM/ECF. [1624584] [15-1672] [Entered: 10/21/2015 02:35 PM]
10/21/2015	271	SEALED FINAL FORM BRIEF,

		on behalf of Appellee United States of America, FILED. [1626270] [15-1672] [Entered: 10/23/2015 10:12 AM]
10/21/2015	278	SEALED DEFERRED APPENDIX, Volume 4 of 10, on behalf of Appellee United States of America, FILED. [1626457] [15-1672] [Entered: 10/23/2015 11:38 AM]
10/23/2015	288	FINAL FORM BRIEF, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc. FILED. Service date 10/23/2015 by CM/ECF. [1626566] [15-1672] [Entered: 10/23/2015 12:32 PM]
10/23/2015	289	FINAL FORM REPLY BRIEF, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. Service date 10/23/2015 by CM/ECF. [1626576] [15-1672] [Entered: 10/23/2015 12:38 PM]
10/23/2015	292	SEALED FINAL FORM BRIEF, on behalf of Appellant American Express Company and American Express Travel Related Services Company, Inc., FILED. [1627451] [15-1672] [Entered: 10/26/2015 10:52 AM]

12/17/2015	331	CASE, before RKW, RCW, CFD, C.JJ., HEARD. [1666559] [15-1672] [Entered: 12/17/2015 12:03 PM]
12/18/2015	332	ORDER, dated 12/18/2016, pending decision in United States v. Am. Express Co., No. 15-1672, the Court on its own motion hereby orders a temporary stay of the Order of the United States District Court for the Eastern District of New York dated 04/30/2015. The Court further orders a temporary stay in the District Court of any and all matters related to this litigation, by: RKW, RCW, CFD, C.JJ., FILED. [1667760] [15-1672] [Entered: 12/18/2015 01:43 PM]
12/18/2015	334	CERTIFIED ORDER, dated 12/18/2015, to EDNY, ISSUED. [1667775] [15-1672] [Entered: 12/18/2015 02:02 PM]
01/14/2016	355	FRAP 28(j) LETTER, dated 01/14/2016, on behalf of Appellee United States of America, RECEIVED. Service date 01/14/2016 by CM/ECF. [1683949] [15-1672] [Entered: 01/14/2016 10:06 AM]
01/15/2016	358	FRAP 28(j) LETTER, dated 01/15/2016, on behalf of Appellant American Express Company and

		American Express Travel Related Services Company, Inc., RECEIVED. Service date 01/15/2016 by CM/ECF. [1685725] [15-1672] [Entered: 01/15/2016 05:01 PM]
09/26/2016	377	OPINION, the district court judgment is reversed and remanded with instructions to enter judgment in favor of Amex, by RKW, RCW, CFD, FILED. [1870813] [15-1672] [Entered: 09/26/2016 02:43 PM]
09/26/2016	380	CERTIFIED OPINION, dated 09/26/2016, to EDNY (BROOKLYN), ISSUED. [1870837] [15-1672] [Entered: 09/26/2016 02:56 PM]
09/26/2016	383	JUDGMENT, FILED. [1871013] [15-1672] [Entered: 09/26/2016 04:01 PM]
11/10/2016	384	PETITION FOR REHEARING/REHEARING EN BANC, on behalf of Appellee United States of America, FILED. Service date 11/10/2016 by CM/ECF. [1904787] [15-1672] [Entered: 11/10/2016 01:51 PM]
11/16/2016	421	AMICUS BRIEF, on behalf The Retail Litigation Center, Inc. and the National Retail Federation, FILED. Service date 11/14/2016

by CM/ECF. [1908622] [15-1672] [Entered: 11/16/2016 04:25 PM]

11/16/2016	422	AMICUS BRIEF, on behalf of Amicus Curiae Ahold U.S.A., Inc., Albertsons LLC, H.E. Butt Grocery Co., HyVee, Inc., Safeway Inc., The Great Atlantic & Pacific Tea Company, Inc., The Kroger Co. and Walgreen Co., FILED. Service date 11/16/2016 by CM/ECF. [1908708] [15-1672] [Entered: 11/16/2016 04:56 PM]
11/21/2016	449	AMICUS BRIEF, on behalf of Amicus Curiae Discover Financial Services, FILED. Service date 11/21/2016 by CM/ECF. [1911496] [15-1672] [Entered: 11/21/2016 02:20 PM]
11/21/2016	451	AMICUS BRIEF, Consumer Action and U.S. Public Interest Research Group, FILED. Service date 11/21/2016 by CM/ECF. [1911567] [15-1672] [Entered: 11/21/2016 03:09 PM]
11/21/2016	453	AMICUS BRIEF, on behalf of Amicus Curiae Southwest Airlines Co., FILED. Service date 11/21/2016 by CM/ECF. [1911730] [15-1672] [Entered: 11/21/2016 04:32 PM]
11/22/2016	454	AMICUS BRIEF, on behalf of Amicus Curiae John M. Connor,

		Martin Gaynor, Daniel McFadden, Roger Noll, Jeffrey Perloff, Joseph A. Stiglitz, Lawrence J. White and Ralph Winter, FILED. Service date 11/22/2016 by CM/ECF. [1912149] [15-1672] [Entered: 11/22/2016 11:43 AM]
11/22/2016	455	AMICUS BRIEF, on behalf of Amicus Curiae AutoNation, Inc., Bally Total Fitness Corporation, Big Sur Waterbeds, Inc., BJ's Restaurants, Inc., Bridgestone Americas Inc., Brookstone Company, Incorporated, Caleres, Inc., Centric Group, LLC, CoreLogic, Inc., Crestline Hotels & Resorts, LLC, Darden Restaurants, Inc., Denver Mattress Hospitality, Ferguson Enterprises, Inc., Festival Fun Parks, LLC, Fitness International, LLC, Fresh Enterprises, LLC, Host Hotels & Resorts, Inc., Ingram Micro, Inc., Innovative Dining Group, LLC, Jack in the Box, Inc., Lucky Brand LLC, Luxottica Retail North America Inc., Marriott International, Inc., MorphoTrust USA, LLC, Nespresso USA, Inc., Nestle Waters North America Inc., Office Depot, Incorporated, OfficeMax Incorporated, Public

		Storage, Regents of the University of California, Sears Holdings Management Corporation, Sofa Mart, LLC, Staples, Inc., Target Corporation, Tesoro Companies, Inc., The New York Times Company, Tiffany and Company, WP Company LLC and Movant United Airlines, Inc., FILED. Service date 11/22/2016 by CM/ECF. [1912459] [15-1672] [Entered: 11/22/2016 02:08 PM]
11/29/2016	458	AMICUS BRIEF, behalf of Amicus Curiae Darren Bush, Stephen Calkins, Michael A. Carrier, Peter Carstensen, Andrew Chin, Joshua P. Davis, Einer R. Elhauge, Robin Feldman, Harry First, Esq., Eleanor M. Fox, Shubha Ghosh, Thomas L. Greaney, Thomas Grimes, Gregory T. Gundlach, Norman W. Hawker, Thomas J. Horton, Herbert Hovenkamp, John B. Kirkwood, Robert H. Lande, Marina Lao, Mark R. Patterson, Chris Sagers and Spencer Weber Waller, FILED. Service date 11/29/2016 by CM/ECF. [1915647] [15-1672] [Entered: 11/29/2016 01:41 PM]
01/05/2017	462	ORDER, petition for rehearing en banc denied, FILED. [1941027] [15-1672] [Entered: 01/05/2017

04:01 PM]

01/12/2017	463	JUDGMENT MANDATE, ISSUED. [1946683] [15-1672] [Entered: 01/12/2017 04:00 PM]
03/24/2017	464	U.S. SUPREME COURT NOTICE, granting Appellee State of Arizona, State of Connecticut, State of Idaho, State of Illinois, State of Iowa, State of Maryland, State of Michigan, State of Missouri, State of Montana, State of Nebraska, State of New Hampshire, State of Ohio, State of Rhode Island, State of Tennessee, State of Texas, State of Utah, State of Vermont and United States of America extension to file Writ of Certiorari, FILED. [2002092] [15-1672] [Entered: 03/31/2017 02:56 PM]
04/25/2017	468	U.S. SUPREME COURT NOTICE, granting Appellee United States of America a further extension to file Writ of Certiorari, to an including 06/02/2017, FILED. [2024205] [15-1672] [Entered: 05/02/2017 11:07 AM]
04/28/2017	467	U.S. SUPREME COURT NOTICE, granting Appellee Iowa, et al., a further extension to file Writ of Certiorari, to and

		including 06/02/2017, FILED. [2024170] [15-1672] [Entered: 05/02/2017 10:54 AM]
10/17/2017	470	U.S. SUPREME COURT NOTICE, dated 10/16/2017, U.S. Supreme Court docket # 16-1454, stating the petition for writ of certiorari is granted, RECEIVED. [2148730] [15-1672] [Entered: 10/17/2017 09:09 AM]

American Express
Merchant Regulations – U.S.

April 2012

* * *

3.2 treatment of the American Express Brand

For the past 150 years, American Express has built a brand that is synonymous with trust, integrity, security, quality, and customer service. We work diligently to uphold our reputation, and restrict Merchants from engaging in activities that would harm our business or brand.

Except as expressly permitted by Applicable Law, you must not:

- indicate or imply that you prefer, directly or indirectly, any Other Payment Products over our Card,
- try to dissuade Cardmembers from using the Card,
- criticize or mischaracterize the Card or any of our services or programs,
- try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check),
- impose any restrictions, conditions, disadvantages or fees when the Card is accepted that are not imposed equally on all Other Payment Products, except for electronic funds transfer, or cash and check,
- engage in activities that harm our business or the American Express Brand (or both), or

- promote any Other Payment Products (except your own private label card that you issue for use solely at your Establishments) more actively than you promote our Card.

You may offer discounts or in-kind incentives from your regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by Applicable Law): (i) you clearly and conspicuously disclose the terms of the discount or in-kind incentive to your customers, (ii) the discount or in-kind incentive is offered to all of your prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this section 3.2, "treatment of the American Express Brand".

* * *

Agreement for
American Express Card ® Acceptance

The Agreement is by and between **American Express Travel Related Services Company, Inc.,** a New York corporation, and **you, the Merchant**. By accepting the American Express ® Card; you agree to be bound by the Agreement.

General Provisions

* * *

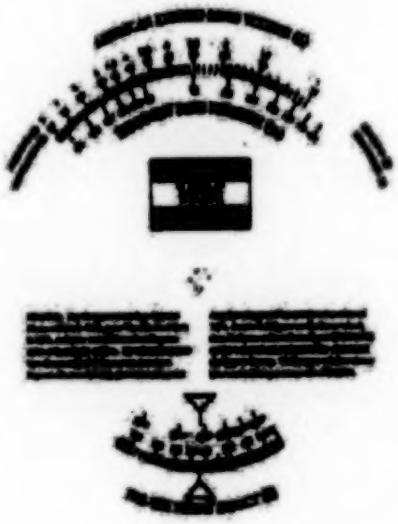
[1.]b. Other Parts of the Agreement.

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To

order a copy, please call our Merchant Services representatives (telephone: 1-800-528-5200). We may charge you a fee for each copy that you request.

* * *

VISA PROFIT IMPROVEMENT CALCULATOR



If your business accepts American Express cards for payment, chances are you are paying them a substantially higher discount than for Visa and other means of payment. This calculator will show you how you may be able to cut that cost and significantly improve your profits. It's as easy as 1, 2, 3.

Important: Before taking any of the following actions, review your current American Express contract to ensure that these recommendations do not violate that contract.

Step 1:

Calculate your profit improvement potential.

- Subtract your Visa discount rate from your American Express discount rate. The difference is your American Express Discount Rate Premium.
- Determine your annual sales volume done with American Express cards.
- Find your American Express Discount Rate Premium on the inner wheel; then locate your annual American Express sales volume on the outer rim. Rotate the outer wheel until the two figures line up.

The window at the bottom of the wheel will show you the additional annual pre-tax profit you can realize by converting American Express transactions to Visa. If you want to improve your profits by an amount up to this level, read on.

Step 2:

Improve your profits by shifting sales volume from American Express to Visa.

You can capture the profit potential from the chart with the wheel. Line up your American Express Discount Rate Premium on the inner wheel with the amount of sales volume you want to shift to Visa. The profit growth will be shown in the window.

Tips for shifting business for higher profits

- Don't let point-of-sale signage influence your customers to select your most costly payment option. Remove all American Express signage now visible to your customers at your point of sale. Install signage which favors your most profitable payment options. For example, Visa decals are available from your Visa representative.
- Train your sales people to ask for a more profitable payment option. A simple suggestion such as "Would you like to put this on your Visa?" is an inoffensive, yet effective way to encourage customers towards a more profitable payment choice.

HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

AMEXGIOR16478545

Paste you can use when negotiating discount rates.

Visa can bring your business far more incremental sales:

- Visa has five times more cards in circulation than American Express, including five million more Gold cards.
- Visa has more cardholders at every income level, including upper-income households. In fact, Visa is found in twice as many households with incomes over $50,000 as American Express.
- Visa credit cards increase your customers' buying power by extending credit. In contrast, most American Express cards require full payment each month for their cardholders' charges.
- Approximately two-thirds of American Express cardholders carry a Visa card. Less than one-fifth of Visa cardholders have an American Express card.

Visa accelerates your cash flow:

- You receive payment for your Visa sales drafts almost immediately — usually within 48 hours, if not faster. American Express probably paying you much more slowly, or charging you an even higher discount for prompt settlement.

For information about point-of-sale signage and other support available from Visa, call your Visa representative.

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AMERICAN EXPRESS
COMPETITIVE STRATEGY

Presentation by
BRADFORD W. MORGAN

BOARD OF DIRECTORS MEETING
VISA U.S.A.

Cannes, France
June 5, 1989

AMERICAN EXPRESS COMPETITIVE STRATEGY

Slide #

The History of our industry shows banks being far more concerned with competing against other banks than with competing against American Express. We think that's changing and we want today to be part of that change.

(#1) Today we'll give a brief overview of American Express. We will review new American Express initiatives which threaten the bank card industry. And we will lay out a strategy for attacking Amex vulnerabilities and exploiting Visa opportunities.

While banks have historically thought of American Express as a somewhat indirect competitor who specialized in a niche of charge card T&E usage among upscale consumers, the truth is that Amex has grown to be the most formidable competitor the bank card industry has today.

(#2) In the past four years American Express revenues have grown from $9.6 billion to $22.9 billion -- a 21 percent annual growth rate.

(#3) And this growth has turned American Express into a powerful financial engine -- with net profits growing from $0.6 billion in 1984 to $1.04 billion in 1988.

(#4) The heart of this financial engine is the travel-related services division, which accounts for 69 percent of total American Express net profits and, within travel-related services, the card business is the crown jewel, representing 60 percent of travel-related services' net profits.

(#5) Despite all of this, Visa has managed to outgrow American Express. Over the past ten years we've averaged 17 percent growth to a $210 billion level while American Express has grown 16 percent to $89 billion.

This outstanding Visa growth has led to a certain feeling of complacency -- a feeling that we can win the long-term race to become the leading payment system by simply continuing business as usual. Well, if history could be used to predict the future, I (#6) guess we could win this race. But, unfortunately, we can't rely on Visa's past success to predict success in the future. That's because our future is threatened by a series of new initiatives recently launched by American Express.

(#7) Here's a quote from the 1988 American Express annual report. You'll note that their former president refers to 1988 as "a period in which new strategic initiatives were launched that will pave the way for continued growth in the years to come."

(#8) Well, here's what those new initiatives are: In summary, American Express is broadening their base, both their cardholder and their merchant base. They are launching new products, not only Optima which is the most direct threat to the bank card industry, but as you'll see later, a whole series of new products which threaten the overall banking industry. American Express is investing in superior new technology that will help them improve their service to both the consumer and the merchant. And, finally, American Express is making a strong attempt to wrest control of the merchant relationship away from bank cards.

Let's look at all of these in more detail. First, American Express' effort to broaden their cardholder base.

(#9) Here are some quotes relating to this effort. As you can see in the quote from Mr. Cooperman, President of American Express' Consumer Card Group, American Express is pursuing a strategy which sees them expanding into new segments. While American Express' target consumer could once be described as "the travelling business executive," their new targets cover a much broader base including retired people, students, working women, etc. And credit card management reports that this effort is being successful to the extent that American Express is expanding its card base at a faster rate now than it did during all of the last 15 years.

(#10) This next slide puts that in perspective. If we can look at the past two years you'll see that American Express' cardholder base in the U.S. has been growing at 14 percent compared to an 8 percent growth rate for Visa cardholders.

And just who are these new American Express cardholders? Well, they look a lot like the holders of your MasterCards and your Visas. The (#11) next slide puts that in perspective. It compares the average household income of American Express cardholders versus Visa cardholders expressed in constant 1989 dollars. As you can see, in 1982 there was a $9,000 difference in the average incomes. As of 1987, the latest year for which we have data, this gap had been cut in half.

As we understand it, American Express is now routinely approving applications for consumers

with average annual incomes of $15,000 or less. If you think that American Express' initiatives threaten only a small part of your cardholder base, you're dead wrong.

(#12) American Express is also broadening their merchant base into merchant segments which represent your bread and butter. The days when Amex targeted only carriage trade merchants are long gone. As you can see here, the American Express Vice President of Marketing for their Establishment Services Division, states that Amex's position is that "wherever the card member wants to use the card, Amex wants to be there, so long as it's legal." That means that American Express is expanding into new merchant categories. New merchant categories which look a lot like our targets -- fast food, gas stations, movie theatres, etc. Amex no longer has any concern about whether the merchant fits their prestige image or not. As you can see, they're already accepted in Mervyn's, Ace Hard-Ware, True Value Hardware, and we understand that negotiations are under way with K Mart, Walmart, and Target.

To give you an idea of how much of their resources Amex is willing to put behind this merchant expansion effort, here's a look at their (#13) organization chart.

As you can see, Amex has a separate marketing group for service establishments, which has teams working in categories like lodging, transportation, restaurants, and retail. They also have a segment of this Special Service Establishments Group which focuses primarily on expansion industries. Each one of these targeted expansion industries

has a separate management group assigned to it, headed up by three vice presidents per expansion industry. Expansion industries include health care, sports, insurance, fast food and entertainment.

And the American Express marketing work being done at headquarters is executed in the field by an excellent sales force working out of six regional offices with over 500 sales reps who are doing merchant support and point-of-sale material.

I should point out here that, while 500 sales reps may not seem like a lot compared to the total field sales forces yielded by the banking industry, we should keep in in mind that these are two different types of organizations. The sales forces fielded by the banking industry are out there selling the services and pricing of one bank versus another. They rarely, if ever, make any attempt to present the merchant community with comparisons of the value of bank cards versus American Express. In contrast, the American Express organization is monolithic. Their sales force is out there every day selling the benefits of American Express versus the bank cards.

And these presentations are being given to your bread and butter, the retail industry. Let me make the point once again: American Express can no longer be thought of as an upscale T&E card. Here's (#14) a quote from Phillip Riese, their Executive Vice President and General Manager of the Service Establishments Division. Mr. Riese says, "We look like a T&E card, we smell like a T&E card, but our biggest industry today is retail.

That is currently our largest growing single industry."

The American Express drive into the retail business which represents (#15) your bread and butter is being successful. As you can see here, they are now accepted in 84 of the top 100 department stores (#16) compared to 82 for Visa. And here's a chart which shows the growth they are achieving in retail. As you can see, retail accounts now represent $17.6 billion for American Express, 20 percent of their total. This compares to only $4.4 billion and 13 percent of their total in 1982.

(#17) Now let's move on to one of the other new American Express strategic initiatives which threatens the banking industry, their work with new products.

The new American Express product which most directly threatens the bank card industry is Optima. While American Express tried to lull the banking industry into inactivity with statements of some very modest program goals when Optima was introduced, American Express is (#18) now talking much more aggressively. Here are a couple of quotes. The general manager of their Optima Card Division says, "My goal is to put the Optima Card into the wallet of every American Express cardholder." And in a recent letter to the editor of a magazine, their vice president of industrial relations says, "We are experiencing significant high quality growth in our consumer lending business, all area of great strategic emphasis for us."

The new aggressive stance American Express is taking behind Optima (#19) should be a great concern to you. As you can see here, Optima Card holders are bank cardholders. Eighty percent of the people, who carry American Express Green Cards and the Gold Cards also carry a bank card. In the case of Optima, though, fully 95 percent of the current Optima cardholder base are current bank cardholders as well. (#20) And what happens when Optima Card gets in the wallet of one of your bank cardholders? Research shows that 75 percent of these people substitute the Optima Card for usage of their bank cards. Indeed, 20 percent of Optima cardholders say they're using it as a total replacement for their bank card.

Think of the impact this is having on your outstandings. To put that (#21) in perspective, here's a conservative projection of the outstandings American Express can expect on their Optima Card. As of the end of 1988, Optima was up to $3 billion in reported outstandings on their Optima Cards. Looking forward, we know that American Express has said that they have a short-term goal of having Optima Cards in the wallets of 40 percent of the current American Express cardholder base by 1982. If these new Optima cardholders carry the same outstandings level per account that we are currently seeing on Optima cards, Optima should be up to $23.2 billion in outstandings by 1992. We think that's a conservative estimate.

(#22) If we assume that 48 percent of Optima outstandings are cannibalized from bank cards (this being based on the consumer research we've

done thus far) and if we assume a 4 percent pre-tax income level from outstandings to the bank, then this next chart quantifies the effect of Optima's growth on your bankcard income. As you can see, if Optima does hit $23 billion in outstandings by 1992, this will reduce 1992 bankcard income by $442 million.

(#23) But Optima is not the only product that American Express is pursuing to take income away from the banking industry. One of the points this slide makes for me is to demonstrate the need to broaden awareness of the American Express threat beyond the boundaries of just the card part of the banking industry. Amex is taking the profits they are generating from their card and travelers cheque businesses to fund attacks on the overall banking industry with new products in money markets, saving certificates, CDs, home mortgages, etc.

(#24) Moving on to the next area of new strategic initiatives from Amex. We have their investment in superior new technology.

(#25) The most important development in this area is Project Genesis. Genesis is a rebuild of the total Travel Related Services computer system worldwide to integrate them into a single system incorporating all products and all regions. It allows Amex to combine and manipulate their massive data base of information about their consumers and their merchants. When Project Genesis was first announced, they indicated that it would be a $250 million investment over five years. More recently we've seen estimates coming out of American Express that this project could

involve as much as a $500 million investment in new technology.

(#26) Here are a couple of quotes about Project Genesis. Amex's Vice President of Operations and Services says, "It's not a systems project but more of a business vision." Another American Express executive sums it up as, "We are betting the ranch on the Genesis Project."

At first glance you might think that referring to a $250 to $500 million investment as "betting the ranch" represents hyperbole. But we don't think this Amex executive was referring to the size of the investment. We think he was referring to the strategic importance which Amex places against this project. As you'll see later in this presentation, a key to American Express' long-term prosperity is their ability to command a premium discount from the merchant community. Visa's product and service quality have improved so much relative to American Express that we are now at a point where we can truly threaten their ability to command premium pricing from the merchant community. We think American Express is looking forward and seeing this threat. We believe they are looking at Project Genesis as being an area where they can gain enough of an advantage versus the bank card industry to continue justification of their premium pricing to merchants. American Express is betting the ranch that they can develop something as a monolithic organization that the bank card industry will not be able to match due to its fragmented structure.

(#27) Let's look at a bit more detail about what Project Genesis can do for American Express. This

next chart organizes some of the key benefits of Project Genesis according to where the benefit will be derived. As you can see, American Express will benefit in the form of reduced operating costs. We've heard estimates that they will lower their billing cost by 25 percent and they'll clearly reduce their float expense, reduce their fraud losses, and gain much cheaper data manipulation capabilities.

Project Genesis will also have some benefits for the consumer by enhancing American Express' ability to provide such services as personalized interaction, a cross-reference of all Amex relationships, spending limits that are tailored not just to the individual but also perhaps to the time of the year, and a whole array of valet services.

However, we believe the greatest benefits of Genesis will be those delivered to the merchant community. Genesis will permit Amex to provide the merchant with highly customized reports and mailing lists. If you'd like a bit of perspective on this, imagine that you are a car dealership trying to decide which payment transaction card you want to accept in your service department and which supplier you want to do your card processing. The first salesman in the door represents the banking industry and he tells you about the price of his processing service compared to the bank down the street. The next salesman through the door represents American Express and he promises you a mailing list of all consumers within a twelve mile radius of your dealership who have spent more than $200 on automobile repairs in the past year or who have shown a sudden increase in their monthly

spending patterns indicative of having received a salary increase. Which of these companies will you want to do business with and will you be willing to pay a premium discount to American Express?

Other benefits to the merchant from Project Genesis include improved chargeback handling and documentation, reduced fraud losses, and the potential for faster authorization and settlement.

We believe the bank card industry needs to recognize right now the threat the Project Genesis represents to their long-term market share. We believe the bank card industry needs to take action to counteract this threat immediately. It is Visa's intention to take the lead in this process.

(#28) The final area of new strategic initiatives from American Express concerns their attempt to gain control of the merchant relationship. (#29) This next slide is a simplified reminder that the processor truly controls the merchant relationship. It is the processor who controls the service to the merchant, authorization time, transaction pricing, access to information, and the ability to change product requirements and capabilities -- particularly as new products and services are introduced. If that processing is being done by a Visa member or by a neutral third party, our members can fare okay. When American Express controls that relationship, we're in danger. There is very little value from being one of the owners of the railroad if a competitor is in full control of all the railroad stations.

(#30) And here's what American Express is doing to get control of those stations. They've been

employing various anti-competitive pricing strategies, bundling transaction fees with merchant discounts to gain major pricing advantages versus Visa members, and employing pricing incentives for merchants to purchase American Express terminals. We're seeing American Express discriminate between their merchants and bank card merchants. This takes the form of requiring non-Amex merchants to provide incremental E.D.C. (that is, electronic data capture) data. We've seen what we believe to be artificial installation delays for non-Amex terminals and Amex EDC data requirements which favor the new terminal they are now selling.

We also currently have an inequitable clearing access situation. American Express has clearing links to Visa, but Visa is not linked to American Express. With few exceptions, member access to American Express is solely through third parties.

(#31) In summary, here's the threat from American Express' new initiatives:

American Express is broadening their base. Expanding out of their niche and into your bankcard area. Expanding to your cardholders and to your merchants.

American Express is fielding new products which will cut bankcard profits significantly. Optima alone has the potential to cut your bankcard profits by $0.5 billion per year by 1992, to say nothing about the other new products like CDs and home mortgages which threaten the overall bank business.

Amex is investing in superior technology which will significantly enhance their card utility for their consumers and, very importantly, will supply merchants with value-added information and services which have the potential of justifying a continuation of Amex's premium discount to the merchant.

And finally, Amex is making an aggressive attempt to take control of the merchant relationship which is so vital to our future success in this business.

(#32) This next chart attempts to quantify the financial threat from the new American Express initiatives. It's not a pretty picture! We've shown two projections here, one conservative and one very realistic. The conservative estimate assumes that Optima expands to 40 percent of the American Express card holder base and that the other American Express initiatives result in a shift of two market share points from bank cards to American Express. Using these conservative estimates, we see the banks' annual pre-tax profit cut by $600 million by 1992. If we assume, however, that Optima expands to 78 percent of the Amex cardholder base (in effect to all non-corporate Amex cardholders) and that the other initiatives result in a shift of five market share points to American Express, you can see that American Express could easily be cutting pre-tax bankcard profits by $1.25 billion by 1992.

That's a major threat and we clearly need to take action to offset (#33) this threat. Visa is taking the lead with strategies and actions designed to defend your profits. Our strategies for this can be broken

down into two groups -- those designed to capitalize on American Express vulnerabilities and those designed to capitalize on Visa's opportunities.

(#34) Let's look first at American Express' vulnerabilities. There are two. First American Express is depending upon banks and the bank card industry and second, the American Express premium price success cycle is fragile. It will not withstand an attack by a determined competitor.

(#35) This next chart summarizes American Express' dependence on the banking industry. Any outside looking at our business would probably be amazed to see how kind the banking industry has been to this competitor.

Banks distribute American Express' products. The most notable of these is the American Express travelers cheque. Bank sales of American Express travelers cheques give American Express $45 million in profits each year. Just as importantly, the banking industry sale of American Express travelers cheques gives prestige and credibility to this product. Because they are widely available for purchase from banks, American Express travelers cheques have far more consumer credibility than they would if their sale was limited to travel agencies and retail stores.

And, when a bank sells an American Express travellers cheques in preference to a Visa or MasterCard cheques, they are reinforcing the brand name of their competitor while hurting the image of their own most profitable brands.

Banks have also financed American Express products -- most notably the American Express Gold Card. Even though American Express now has the ability to finance the gold card on their own, the latest data

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and which listed by name every Visa and MasterCard board member whose bank sold an American Express travelers cheques in any of their branches, using this as evidence of the lack of banking industry support for Visa.

(#37) Here's another example. This is a quote from an American Express letter to bank branch managers which announces a sweepstakes promotion in which the bank branch manager would be rewarded for selling American Express Green Cards through the bank. What's notable about this letter is that it was sent to the bank branch without the knowledge of bank management. We can't help but wonder how many bank branch managers are out there right now selling your consumers American Express cards instead of bank cards without the knowledge of their bank's management.

(#38) We think the time has come for the banking industry to recognize this external threat and close its ranks. Visa will be looking for ways to help and encourage the banking industry to reduce its relationships with American Express and to charge Amex an appropriate price for any access to our industry's strategic assets.

We certainly won't strike Amex any fatal blows in this manner but we can make an important dent

in the prestige and the income which the banking industry is currently giving to American Express.

(#39) To put this in perspective, if we make a 10 percent reduction in the banking industry's use of FDR and sale of American Express travelers cheques, we will reduce American Express' net income by 1 percent. If the banking industry withdraws total support of American Express travelers cheques and FDR, they will reduce Amex net income by $85 million -- that's $85 million that American Express will not have to invest behind Optima, Project Genesis, or the very heavy advertising they're directing at your customers.

(#40) While that is an important step, Amex's most important vulnerability is a premium price success cycle that will not withstand attack from a determined and reasonably concerted bankcard industry.

(#41) Here's what we mean by a premium price success cycle. As you can see (looking at the top), American Express has real advantages versus bank cards. They have even more advantages which are only perceived -- that is, the consumer or the merchant thinks American Express takes these real and perceived advantages and uses them as the basis to charge merchants and consumers a substantial premium. They then take that premium and they invest it in advertising and in systems and services to reinforce and enhance their real and perceived advantages.

As you can see, this is a cycle. It feeds itself and very importantly, it is a different cycle than the bank card industry has been on. By and large, the bank card associations had been working to try to

become the low cost supplier to the banking industry. So while the bank card associations have been pursuing cost reductions, efficiencies, and lower pricing, American Express has been pursuing higher pricing to fund the creation and aggressive marketing of product and service advantages.

(#42) We can't continue business as usual. We need to attack this premium price success cycle and the way to attack it is by attacking their real and perceived advantages. If we can eliminate their advantages, or at least eliminate those advantages which are meaningful to consumers and merchants, we can pressure their merchant discount and thus weaken their financial engine and we can encourage consumer preference for Visa that helps to keep Amex as a niche product.

(#43) The key Amex vulnerability is their merchant discount. American Express is currently charging a discount of about 3.25 percent (#44) versus 1.75 percent for bank cards. And as you can see in this next chart, that discount represents 68 percent of American Express' card revenues while 30 percent of their revenues comes from their cardholder fee. The merchant discount, 68 percent of their card revenues, is what American Express is trying to protect with Project Genesis. The 68 percent merchant discount and 30 percent card member fee income is what Amex is trying to protect with their overall strategy of investing heavily in advertising.

(#45) Amex's merchant discount premium is indeed vulnerable, as shown in this next set of quotes form the merchant community. As you can

see in the first quote, American Express' premium discount is recognized by the financial people out there in the merchant community and they're sensitive to it. But as you can see in the next quote, top management, marketing management, and operations management frequently are not as aware of this discount or believe that it is justified. This quote refers to "Management Horizons Data." That's the name American Express uses for their presentations which attempt to convince the merchant community that Amex is worth their discount premium because they bring in a better class of consumer who would not be brought in by the bank card industry. The third quote shows that the American Express Management Horizons Data is by-and-large "hot air." This is quote from a merchant that dropped American Express and found that Amex hadn't really been bringing any incremental sales in the door. The final quote, from a vice president at Bloomingdale's, notes that their company has found that Visa can deliver just as good a cardholder as American Express.

(#46) There is fairly good merchant awareness that there are more Visa cards out there than American Express cards. However, they may not be aware of the numbers. As you can see here, there are 116 million Visa cardholders versus only 22 million American Express card holders -- and keep in mind that 80 percent of those people coming in the door with an American Express card also have a bank card in (#47) their wallet. The merchant community also has not been told well enough that American Express' image of superiority among upscale cardholders is a myth. If you look at households with annual incomes of $50,000 or

higher, for example, 71 percent of them are Visa cardholders compared to only 35 percent carrying an Amex card. We simply are not doing a good enough job of getting these kinds of messages out to the merchant community.

(#48) In contrast, Amex is doing a powerful job of selling themselves to merchants. They market themselves exceedingly well with an incremental sales story and aggressive negotiating. They provide value added services such as a co-op advertising, joint merchant promotions and marketing advice. They've got the ability to deliver messages and services to the merchant community with operations reps, marketing reps, promotion reps. And they are building a potentially unmatchable tool for delivering merchant utility, that being Project Genesis.

(#49) Visa must do a better job of countering these Amex moves. Here's what we see as the Visa imperatives.

First, we need to do a better job of telling the Visa story to merchants. This should be done through an effective trade advertising campaign and through direct communications. Part of those direct communications will come from the Merchant Relations Group which we are now organizing. These people will be developing industry-specific strategies and presentations for merchants. Another key part of the Merchant Relations Group's responsibilities, though, will be to help train and provide materials which will augment and empower the bank sales forces. We will take the lead in providing the bankcard industry sales forces with materials and training

which help them to better communicate the comparative value of using bankcards versus American Express. By doing that, we should help to put pressure on Amex's merchant discount. Merchants don't like paying Amex a premium discount, but they've been misled into believing it is necessary. Visa needs to arm merchants with the facts that they need to negotiate a more favorable discount.

The second area of imperatives concerns eliminating meaningful Amex advantages. Here again, we need to provide merchants with marketing assistance like co-op advertising and joint promotions and, very importantly, we need to improve our merchant service with work such as that done recently in the T&E business. We need to reduce unnecessary and unfair chargebacks, we need to increase our authorization speed and accuracy.

A third area of Visa imperatives is to maintain bank industry control of merchant processing. We need to eliminate Amex pricing advantages. This is an area where Visa recently took steps by eliminating Amex access to incentive rates. We need to develop a more competitive bank card EDC terminal for data capture and report production. And we need to negotiate equitable Visa clearing links to Amex.

Finally, we need to prevent Amex from building a superior service with their Project Genesis. We need to provide equivalent data to merchants in terms of demographics and store specific reports.

All this will pressure Amex's merchant discount and that's the key to (#50) winning this battle.

This next chart quantifies the effect of a reduced merchant discount on Amex's ability to fund anti-bankcard programs. If you look at the horizontal axis, you'll see Amex's current discount rate of about 3.25 percent and, off to the right, you'll see Visa's current average discount rate of about 1.75 percent. The vertical axis shows the pre-tax profit of Amex's Travel Related Services Group. As you can see, if American Express is forced to lower their discount rate by 50 basis point in order to compete more effectively with the bank card industry, this will cut their profits by almost 45 percent. And, if the improvements in our services to merchants and our communications of the comparative value of bankcards to merchants improves sufficiently that Amex needs to reduce their merchant discount by 120 basis points, Travel Related Services will be forced into a break-even financial operation.

I think this chart puts perspective on the quote I showed you earlier where an American Express executive indicated that they were "betting the ranch on Project Genesis."

(#51) American Express is also vulnerable on the premium fees they are charging their cardholders. The Amex Green Card costs $55 a year compared to an average of $18 for a Visa Classic. And, on a Gold Card basis, Amex costs $75 versus an average of $39 for Visa Gold. The comparisons favor Visa even more when you consider that Amex card holders have to pay an additional $15 for Optima in order to get the same benefits as convenience use of a Visa card would provide.

We have been and will continue to put pressure on this premium fee by (#52) communicating to consumers that Visa can deliver more of the basic functionality of a payment transaction card than American Express can. Consumers get a payment transaction card in order to use it with merchants. Visa is accepted by three times more merchants than American Express, worldwide and in the U.S.

(#53) But we do need to improve our service to consumers in many ways. Our authorization performance, while good in the absolute at 97 percent, is not as good as American Express' 99 percent authorization (#54) performance. American Express does a better job than the bank card industry does at taking potential erroneous declines and turning them into authorization approvals via a referral process. We've taken major steps to improve this comparison in the T&E business with the development of the Visa Travel Industry Services package, but much more needs to be done in other industries.

(#55) American Express has a wide range of perceived and real advantages over Visa as far as the consumer is concerned.

They have a strong image of quality and appropriateness and acceptance worldwide. It's ironic that even though Visa is accepted at over three times more merchants worldwide, most American consumers feel that they will see wider acceptance of American Express once they cross our national borders. We must keep hammering home our message that Visa is more widely accepted than American Express.

Amex has a bias to authorize at point-of-sale with no pre-set spending limits and a relatively low level of declines.

American Express has a very high quality of customer service. Customer inquiries are handled in a highly professional manner and they have offered good quality service in such areas as emergency card replacement.

Finally, Amex provides a high level of detailed transaction information to the consumer with country club billing and annual summaries.

Visa needs to respond to any American Express advantages which are truly meaningful to the consumer. We need to compete more (#56) effectively. Here are our imperatives:

We clearly need to tell consumers the Visa story. We need to tell it better than we have told it up until now. We need to significantly increase our advertising and our other efforts to educate the consumer regarding the advantages of using Visa -- advantages such as Visa's superior merchant acceptance in the U.S. and worldwide. We need to reinforce the consumer's sense of the appropriateness of using Visa in many types of merchants. And we need advertising which clearly communicates the features and benefits of Visa products in the absolute and in comparison to American Express.

We need to eliminate all meaningful Amex advantages.

Here again, this involves strengthening the Visa image and its sense of consumer appropriateness through image advertising, situational

advertising, and distribution of our point-of-sale material.

We need to improve Visa authorization procedures with further improvements in the T&E area, and with improvements like the ones we made in T&E through the merchant base. Visa needs to develop and enforce issuer performance standards. And we need to encourage frequent credit limit reappraisals to be sure that excessively conservative limits are not forcing our consumers to become Amex cardholders.

Key: We need to enhance our customer service! We've taken a good first step on this with the quality assurance function and the new "Commitment to Quality" program. We need to go even further in this regard. We need to improve our communications with the consumer. When a customer has any contact with the Visa organization, whether that be with Visa management or with any of the Visa member banks, that inquiry has to be handled promptly and professionally and to the consumer's satisfaction.

Last, we need to do work to provide detailed transaction information to the consumer in a form that gives the consumer value.

The net of all this will be to increase consumer preference for using Visa. And, as we do that, we can expect a very favorable effect on the profitability of Visa member banks. The effect of shifting (#57) consumer preference and Visa's advantage is shown in this next chart. As you can see, every share point that is shifted in the market to the bankcards' advantage -- to the advantage of

Visa and MasterCard -- shifts almost $80 million in pre-tax profit away from American Express and to the bankcard industry. Five share points, not an ambitious goal for Visa, is worth almost $400 million in increased bankcard profitability.

(#58) In summary, I hope this presentation has helped to demonstrate that American Express is an enormous threat. As we showed, American Express has an easy potential to cost the bank card industry $1.25 billion in lost profits by 1992 and that is a conservative estimate of the American Express threat.

But American Express has two main vulnerabilities: They're dependent on the banking industry to continue to give them favorable treatment as we have in the past. This clearly is an issue which the bank card industry needs to address. Secondly, American Express' premium price success cycle is vulnerable. It will not withstand a reasonably concerted attack from a determined competitor.

The bank card industry can, and must, increase the value of their product to the customer -- to the consumer and to the merchant -- and must communicate their superior value better. When this is done, American Express will no longer be able to justify the high prices they are currently enjoying and, as a result, will no longer have excess profits available to fund programs which attack the banking industry. We can do this by identifying and eliminating all meaningful differences between American Express and our bank card product and by communicating our story better to merchants and consumers. Doing that

will weaken American Express' ability to compete and will increase Visa's market share.

Visa will take the lead in this effort. We have already identified important actions which Visa can take in the coming year and in the years ahead to compete more effectively versus American Express. These actions will be built into the budget proposals and marketing plans for 1990 and the years ahead.

Harking back to the slides which I used to open up this presentation, we cannot look back at history and use it to predict the future. We cannot expect to beat American Express in the race to become the world's leading payment transaction system by simply conducting business as usual. The new strategic initiatives from American Express cannot be overlooked. Action to respond to these threats, to defend and grow our business, cannot be delayed. The time has come for the banking industry to recognize American Express as a determined and formidable competitor and to respond with appropriate actions.

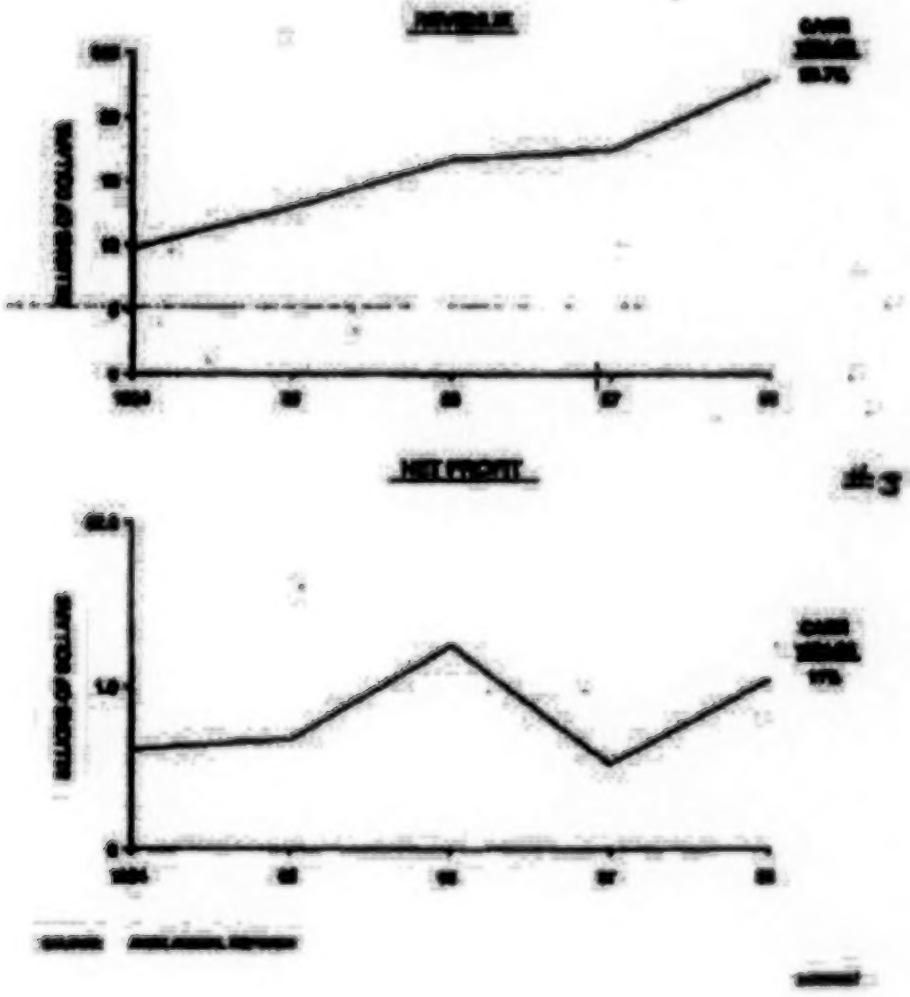
AMEX COMPETITIVE STRATEGY

AGENDA

- Amex Overview
- Amex new initiatives and threats
- Visa strategy
    - Amex vulnerabilities
    - Visa opportunities

AMEX COMPETITIVE STRATEGY

AMEX OVERVIEW
FINANCIAL PERFORMANCE

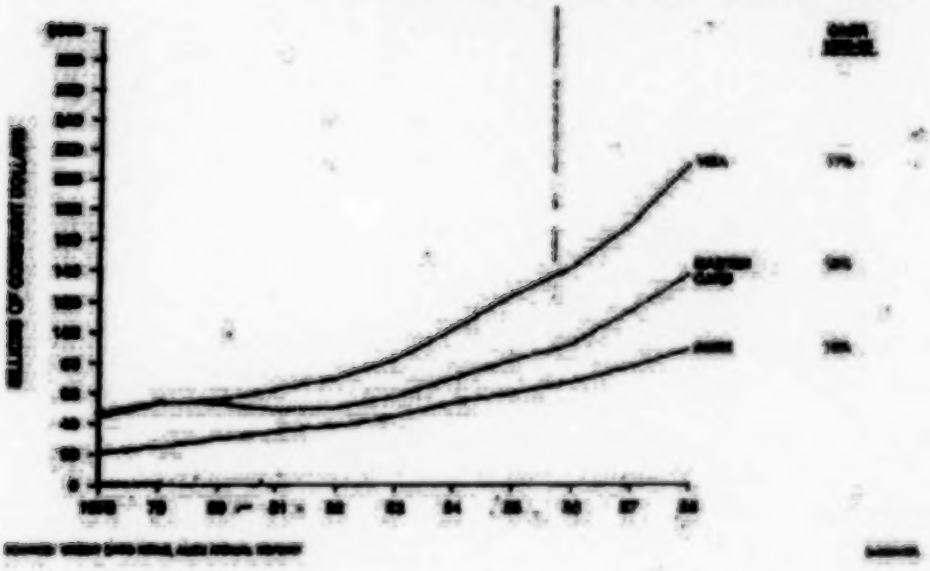


AMEX COMPETITIVE STRATEGY

AMEX OVERVIEW
NET PROFIT

AMEX COMPETITIVE STRATEGY

WORLDWIDE CHARGE VOLUME
RELATIVE PERFORMANCE



AMEX COMPETITIVE STRATEGY

AGENDA

- Amex Overview
- **Amex new initiatives and threats**
- Visa strategy
  - Amex vulnerabilities
  - Visa opportunities

AMEX COMPETITIVE STRATEGY

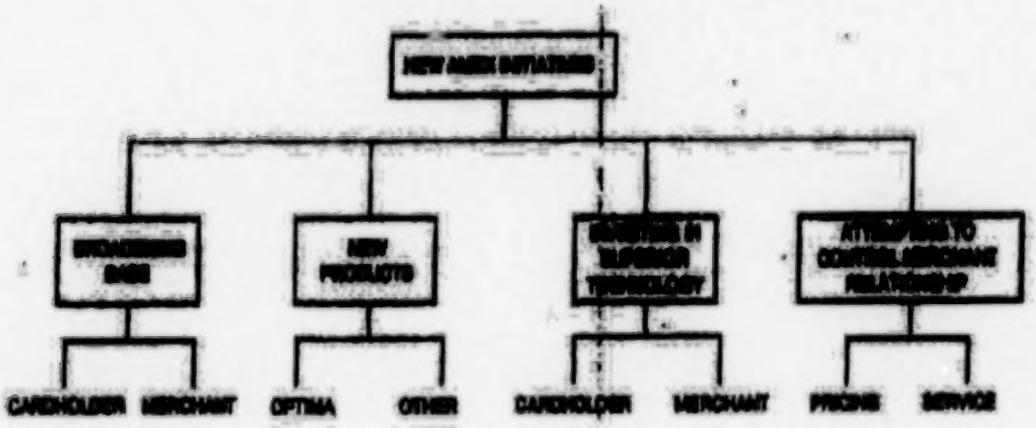
NEW INITIATIVES

"The past year was one of extraordinary achievements throughout all parts of TRS. It was also a period in which new strategic initiatives were launched that will pave the way for continued growth in the years to come."

Louis Gerstner Jr.
Ex-President
Amex Annual Report 1988

AMEX COMPETITIVE STRATEGY

NEW INITIATIVES



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
CONSUMER EXPANSION

"To attract consumers in our new targeted segments means developing a host of new services tailored to their needs ...

...the strategy is to broaden the utility of the card."

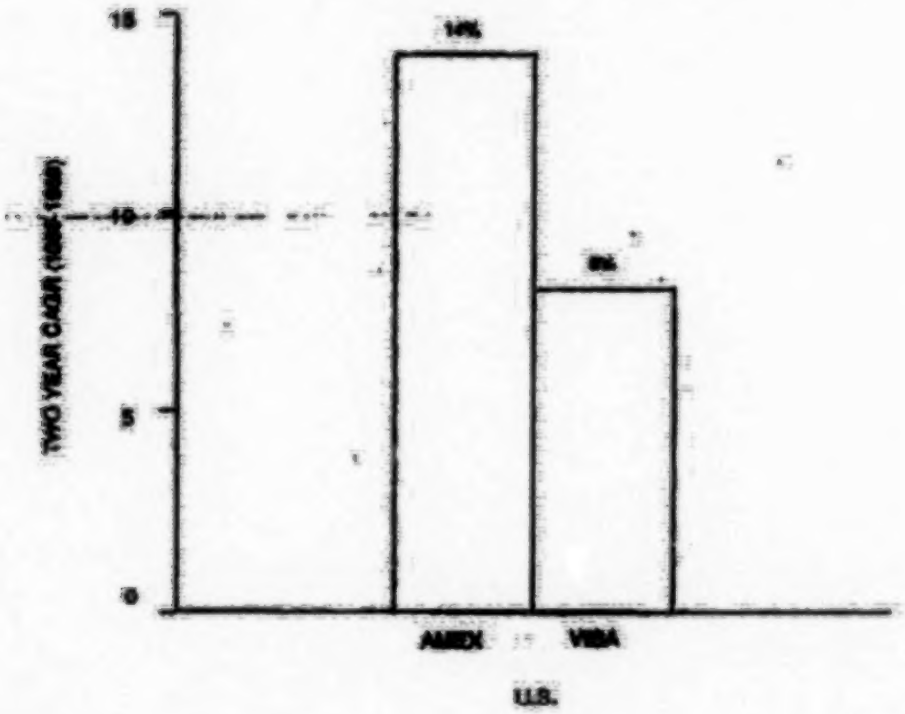
Edwin Cooperman
President
Amex Consumer Card Group

"By aggressively expanding its consumer base into new segments, Amex is expanding its card base at a faster rate than it did during the 1970's and the early 1980's."

Credit Card Management

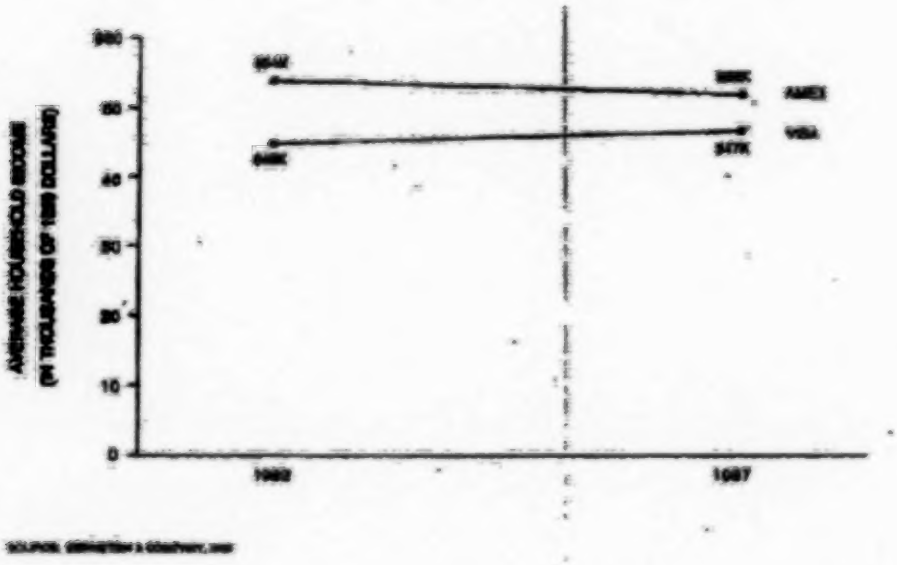
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
GROWTH IN CARDHOLDER BASE



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
CARDHOLDER INCOME

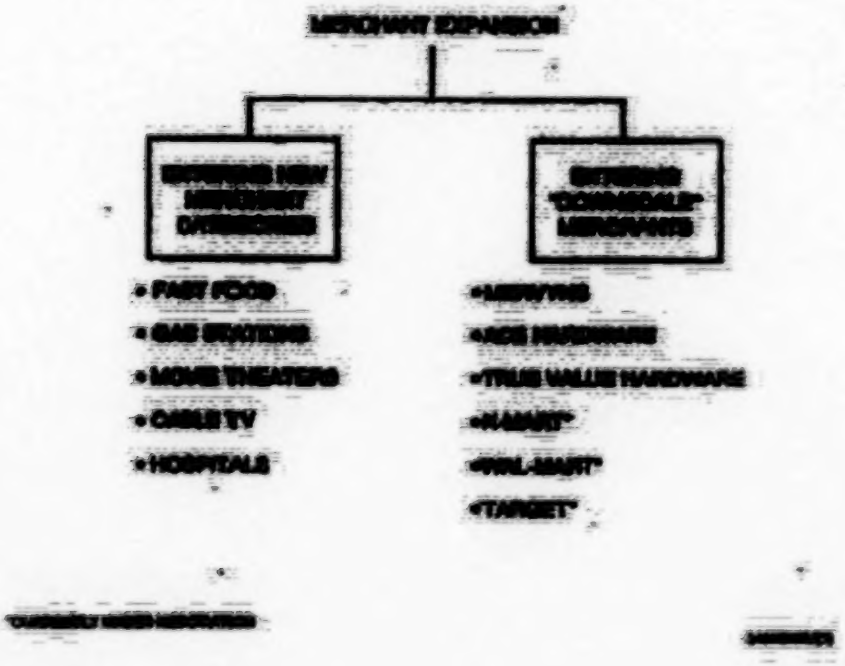


AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
MERCHANT EXPANSION

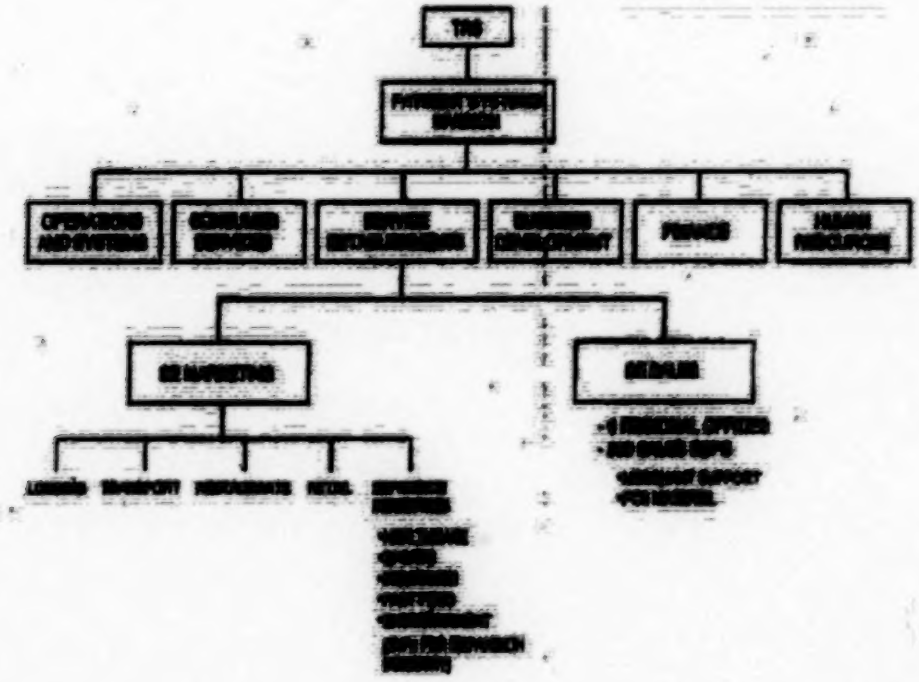
"Our thinking is that wherever the card members wants to use the card we want to be there, so long as its legal."

John A. Crewe
Vice President, Marketing
Amex Establishment Services
Division



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
MERCHANT EXPANSION



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
MERCHANT EXPANSION

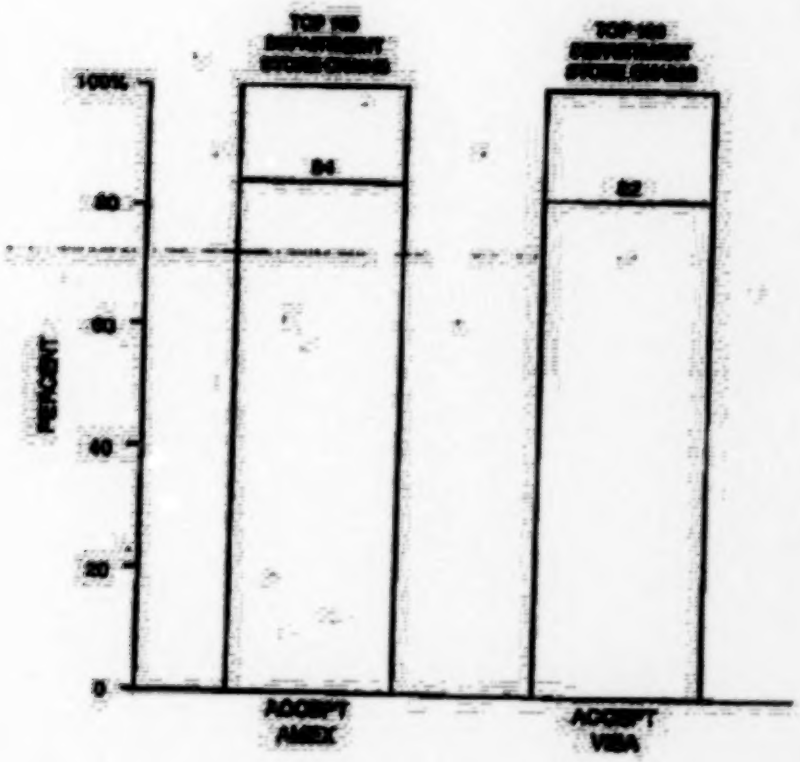
Pursuing Retail Agressively

"We look like a T&E card, we smell like a T&E card, but our biggest industry today is retail. That is currently our largest growing single industry."

Philip Riese
EVP, General Manager
Amex Service Establishment
Division

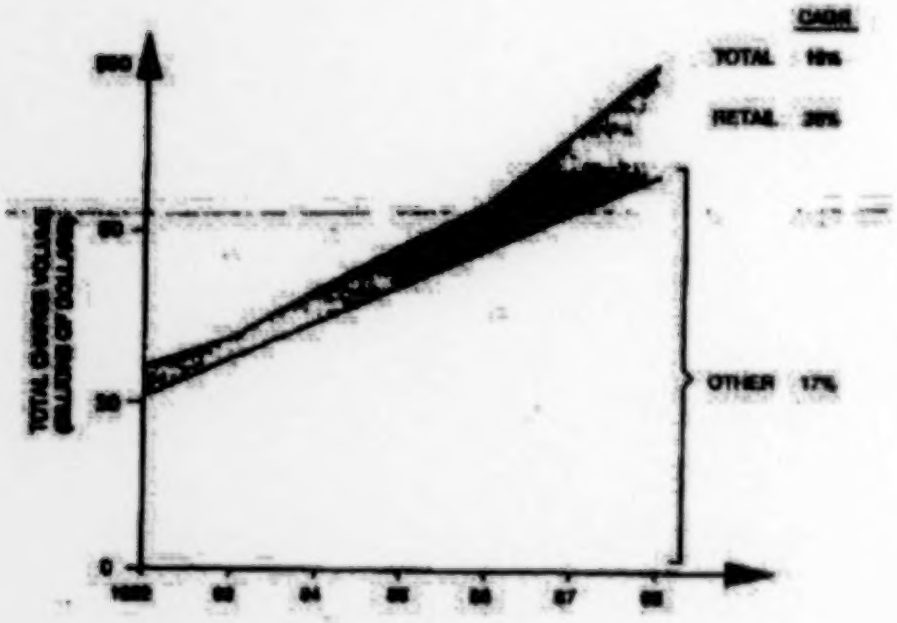
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
RETAIL ACCEPTANCE



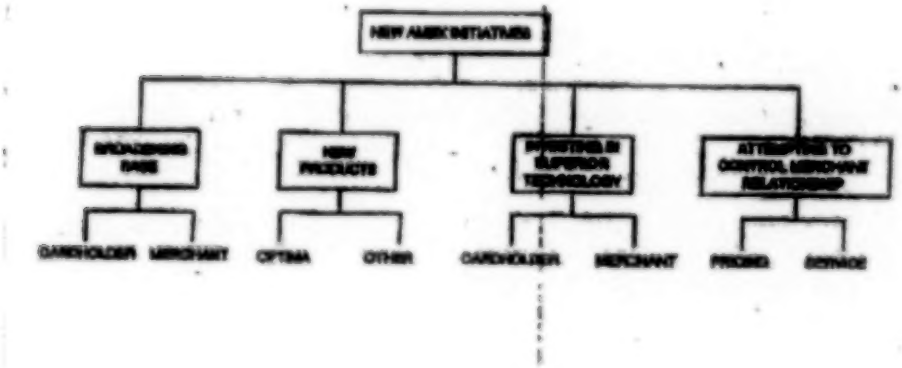
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
WORLDWIDE AMEX RETAIL VOLUME



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES



"My goal is to put the Optima card into the wallet of every American Express cardholder."

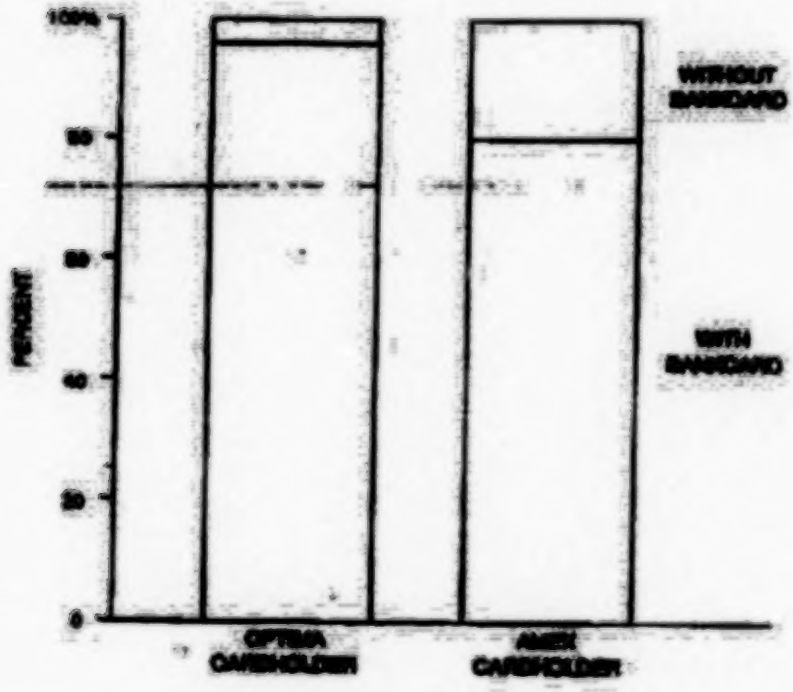
Anne Busquet
SVP – General Manager
Optima Card Division

"We are experiencing significant high quality growth in our consumer lending business, an area of great strategic emphasis for us."

Craig A. Streem
VP Investor Relations
Amex

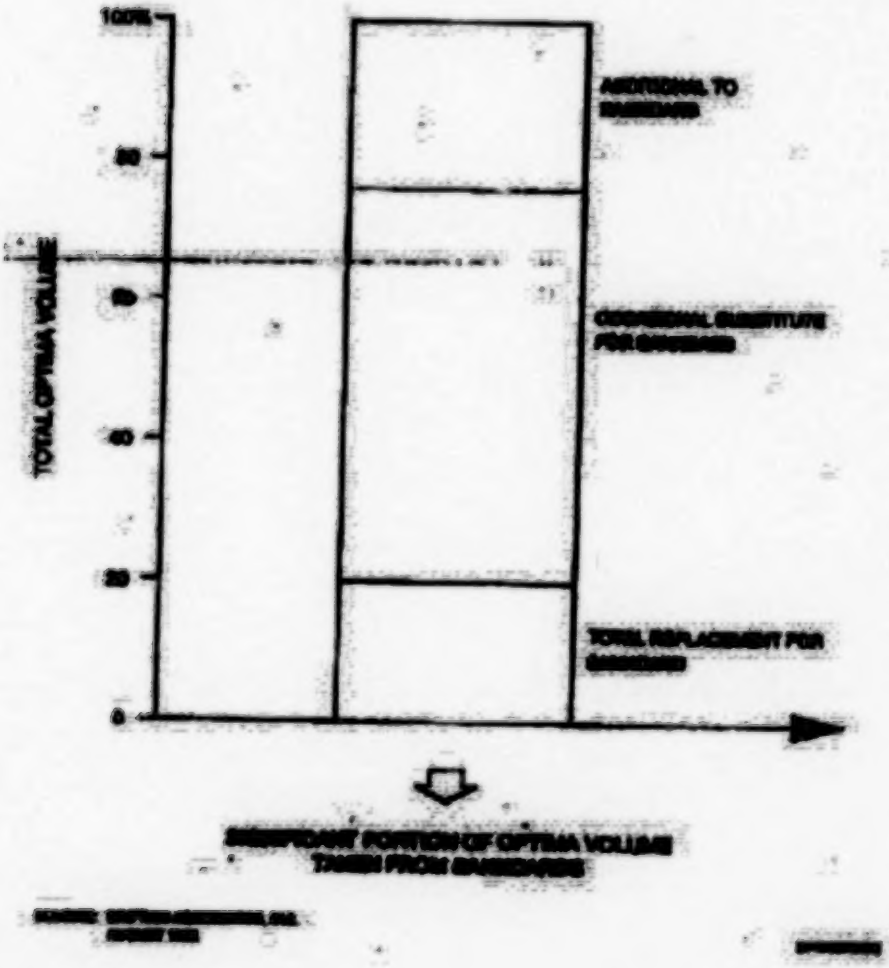
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
CARDHOLDER OVERLAP



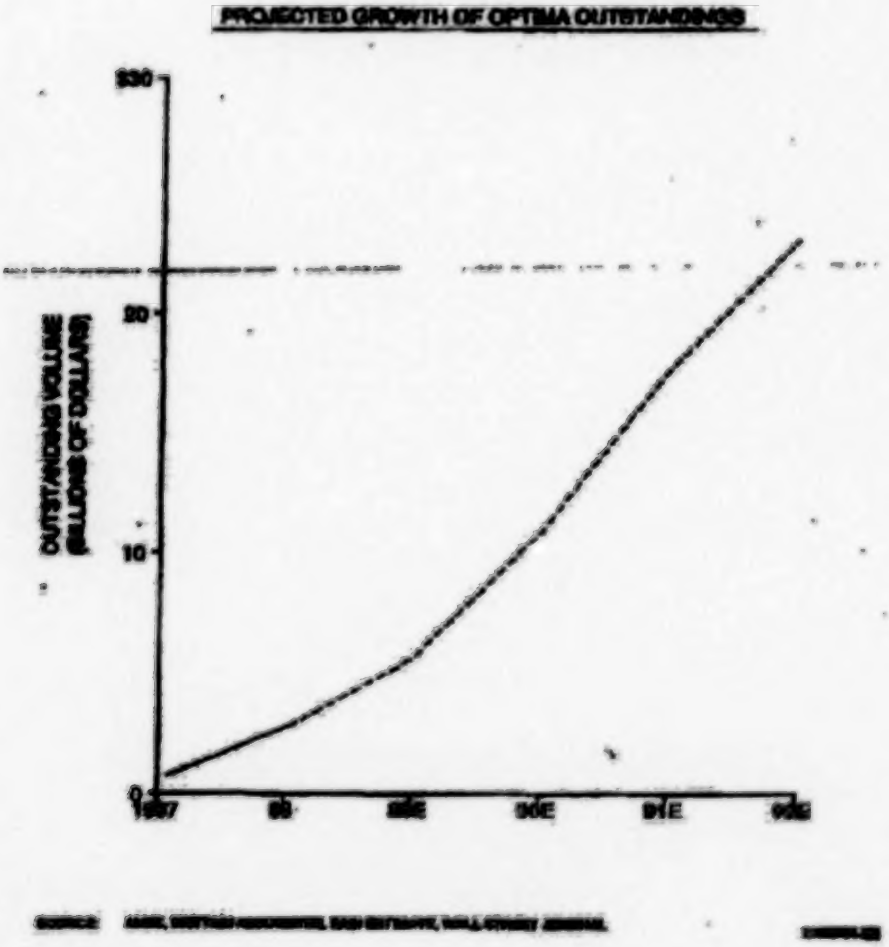
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
OPTIMA SUBSTITUTION FOR BANKCARDS



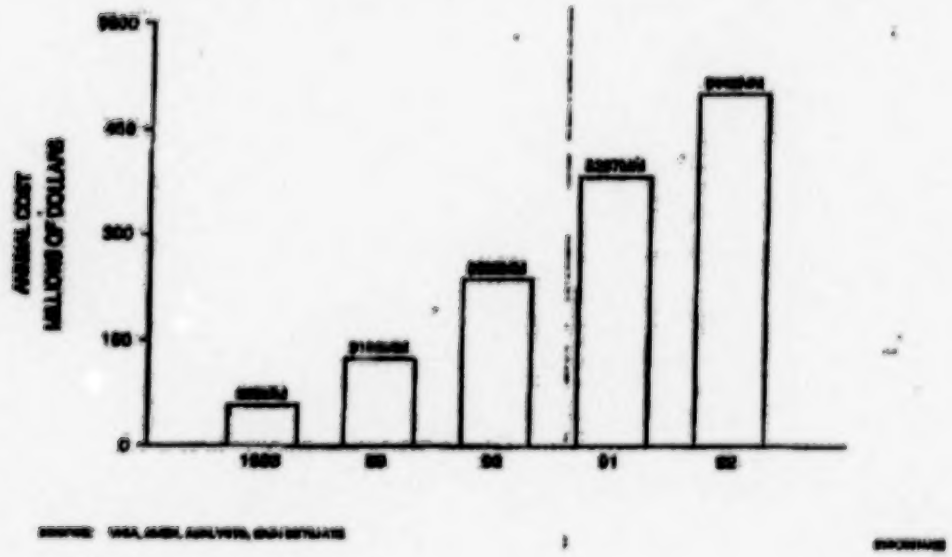
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
OPTIMA OUTSTANDINGS



AMEX COMPETITIVE STRATEGY

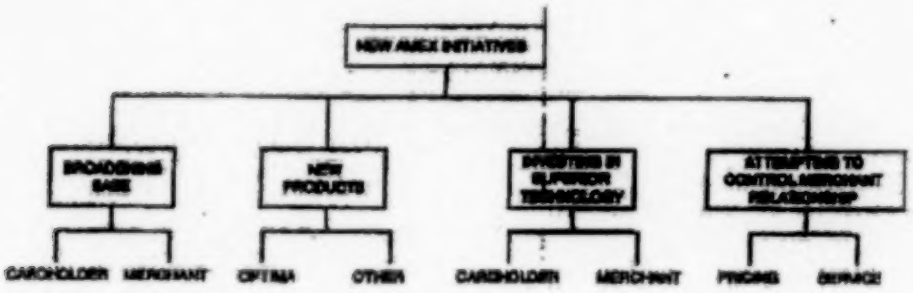
NEW INITIATIVES
COST OF OPTIMA TO BANK INDUSTRY



- Money market accounts
- Savings certificates (CDs)
- ATM cash access
- Home mortgages (under development)
- Consumer investment management
- Mutual funds (under development)
- Life insurance

AMEX COMPETITIVE STRATEGY

NEW INITIATIVES



Project Genesis

- A rebuild of all TRS' computer systems worldwide, integrating them into a single system incorporating all products and all regions
- Built around a massive database of all Amex's customer and merchants
- A $250MM investment over five years using the most advanced computer and software technology available

Insider Perspectives

"It is not a systems project, but more of a business vision."

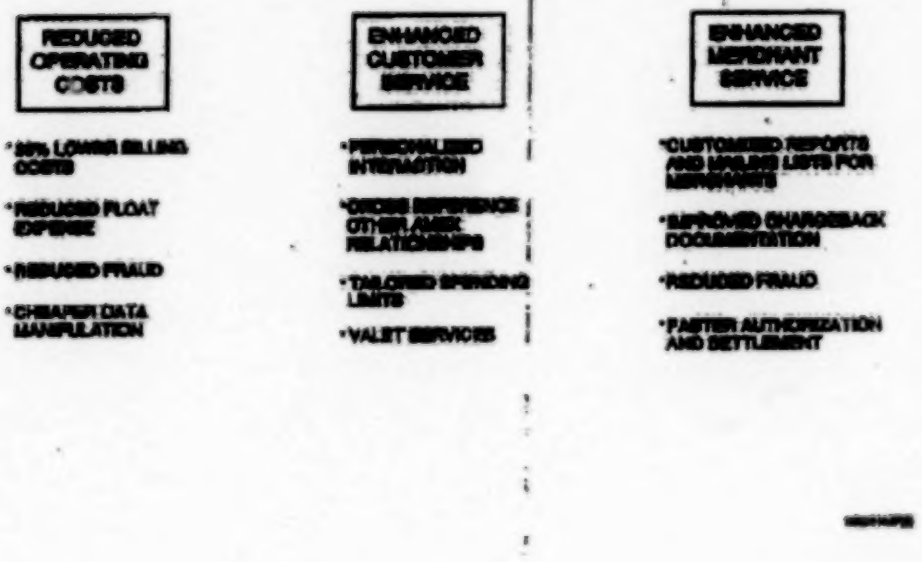
William Tindall
VP Operations and Services

"We are betting the ranch on the Genesis Project."

Kenneth Chenault
Executive Vice President,
Amex Platinum/Gold Card
Division

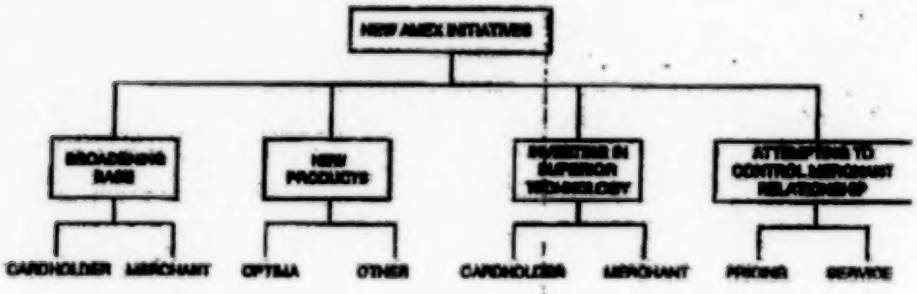
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
PROJECT GENESIS

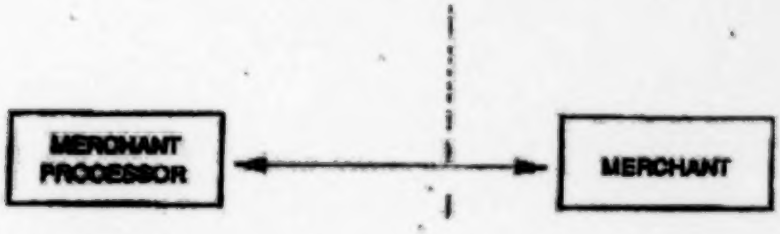


AMEX COMPETITIVE STRATEGY

NEW INITIATIVES



AMEX COMPETITIVE STRATEGY
VALUE OF MERCHANT PROCESSING



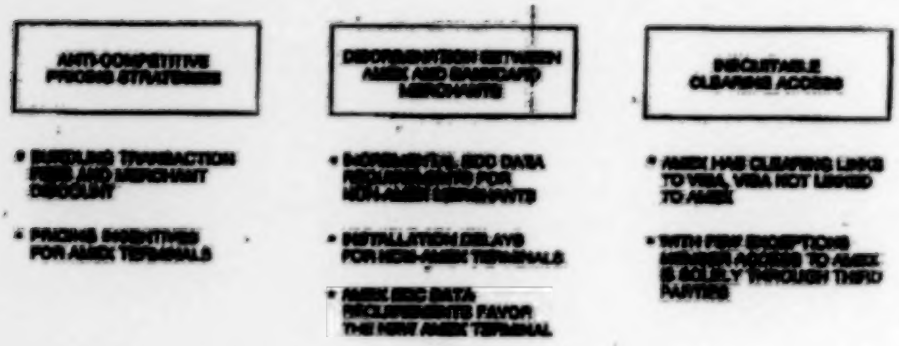
PROCESSOR CONTROL

- MERCHANT SERVICE
- AUTHORIZATION TIME
- TRANSACTION PRICING
- ACCESS TO INFORMATION
- ABILITY TO CHANGE PRODUCT REQUIREMENTS AND CAPABILITIES

AMEX COMPETITIVE STRATEGY

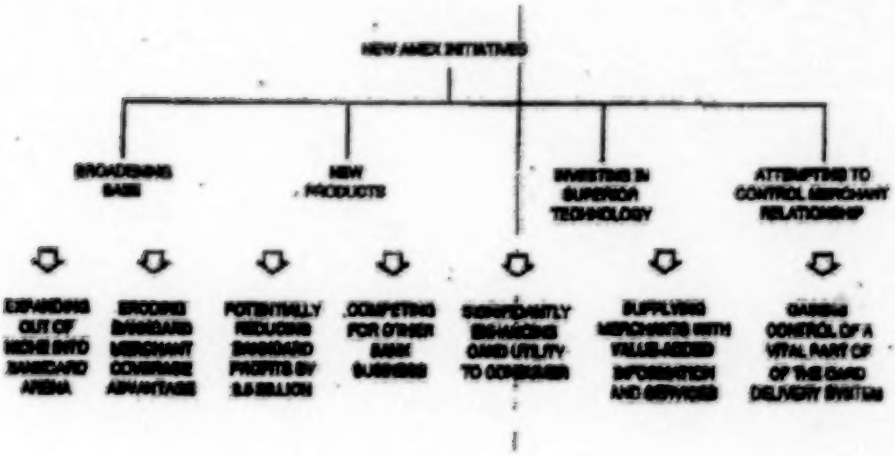
CONTROL OF MERCHANT RELATIONSHIP

AMEX TACTICS



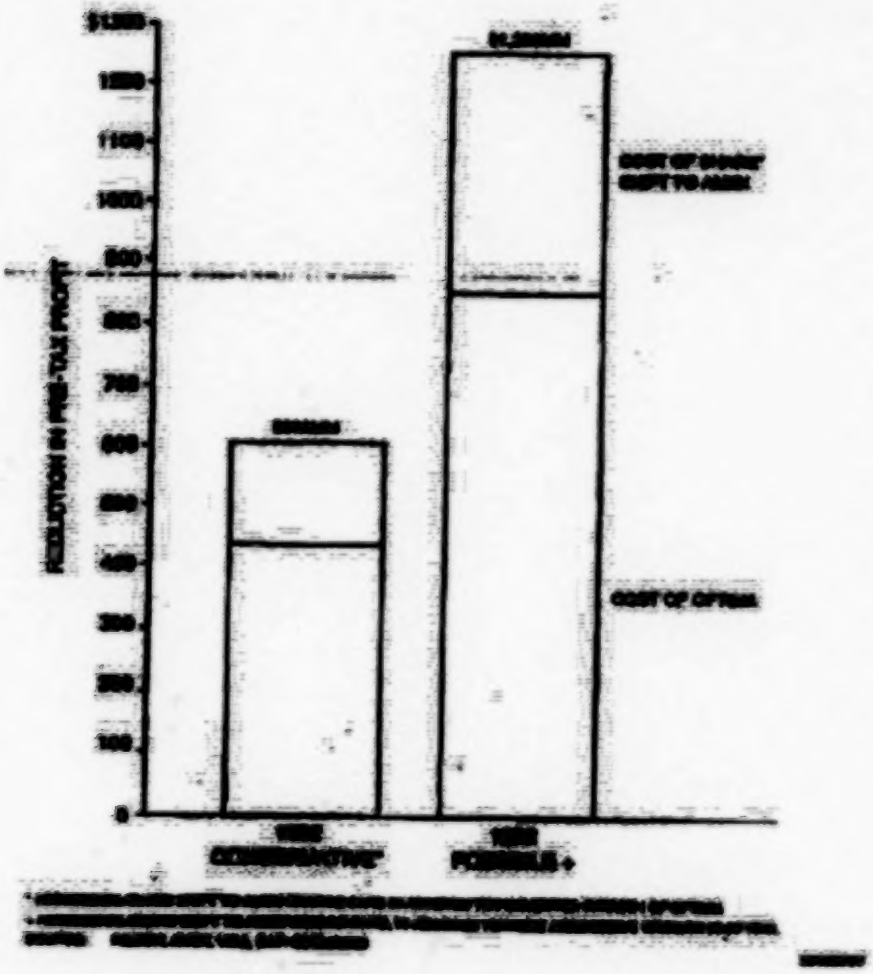
AMEX COMPETITIVE STRATEGY

NEW INITIATIVES SUMMARY



AMEX COMPETITIVE STRATEGY

NEW INITIATIVES
POTENTIAL ANNUAL COST TO
BANK INDUSTRY



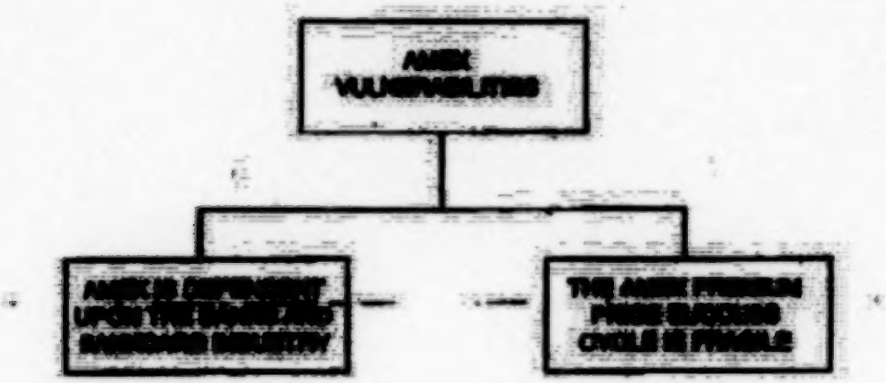
AMEX COMPETITIVE STRATEGY

AGENDA

- Amex overview
- Amex new initiatives and threats

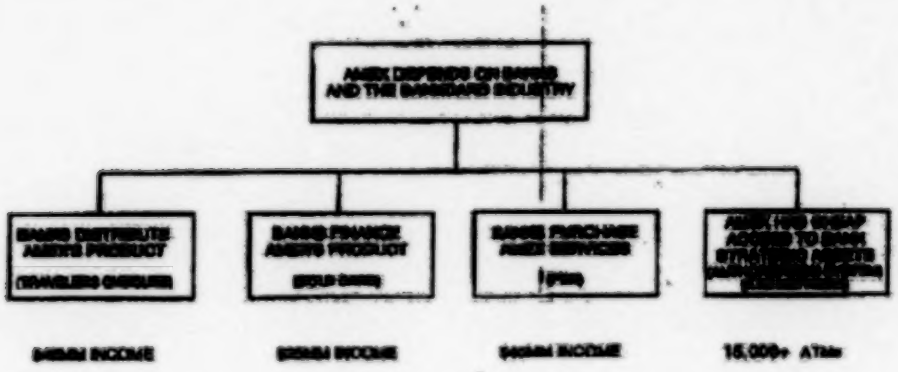
- Visa strategy
  - Amex vulnerabilities
  - Visa opportunities

AMEX COMPETITIVE STRATEGY



AMEX COMPETITIVE STRATEGY

AMEX DEPENDENCE



AMEX COMPETITIVE STRATEGY
RELATIONSHIP WITH BANKS

Fostering Interbank Competition

"Even if Optima had three million cardholders, how can any bank be concerned with that when fifty million bankcard customers are being taken from local banks by out-of-state banks?"

James T. Larkin
Amex VP

AMEX COMPETITIVE STRATEGY
RELATIONSHIP WITH BANKS

Amex Bank Manager Sweepstakes

"In an effort to reward the financial institution personnel that help American Express acquire new cardmembers, we have launched the American Express Bank Manager Sweepstakes...

American Express will award branch managers one sweepstakes entry for each card application approved from the bank's take-one displays...

Take one's are a cost-free maintenance-free program that lets your institution earn income from commissions paid for each approved card application."

Lou Eiler
Amex VP

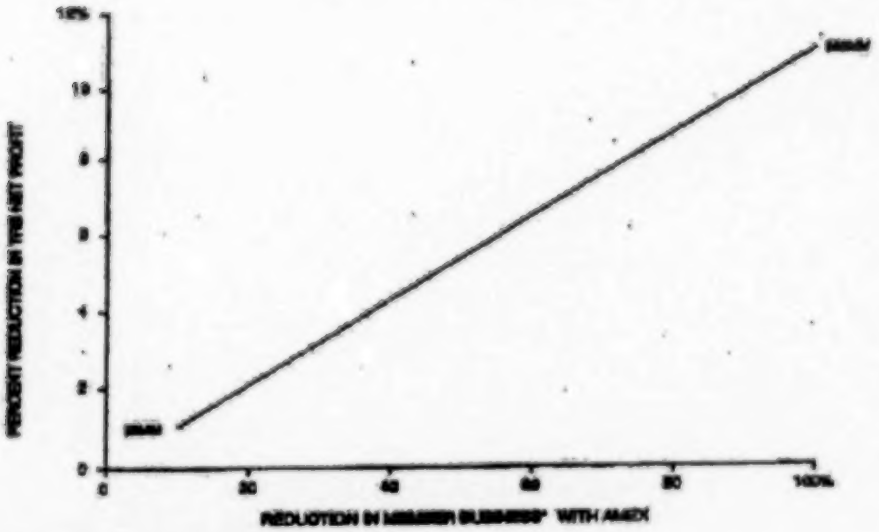
AMEX COMPETITIVE STRATEGY

BANK IMPERATIVES

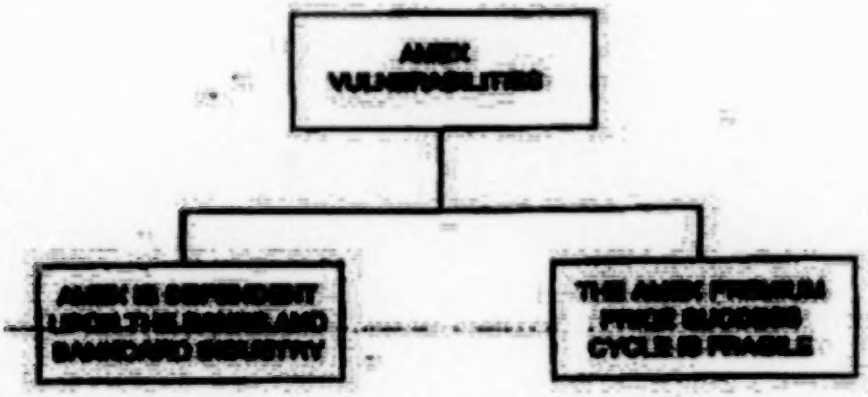
- Reduce member business relationships with Amex
  - Travelers cheques
  - Gold card
  - FDR
- Appropriately price access to bank strategic assets
  - Acquirer networks
  - ATM networks

Important and appropriate,
but not a fatal blow

AMEX COMPETITIVE STRATEGY
IMPACT OF BANK IMPERATIVES

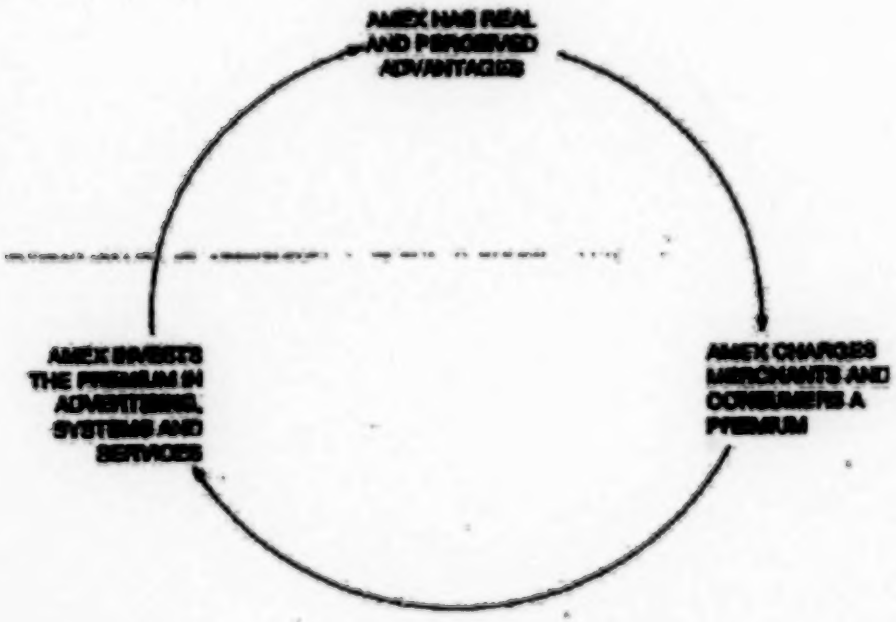


AMEX COMPETITIVE STRATEGY



AMEX COMPETITIVE STRATEGY

AMEX SUCCESS CYCLE

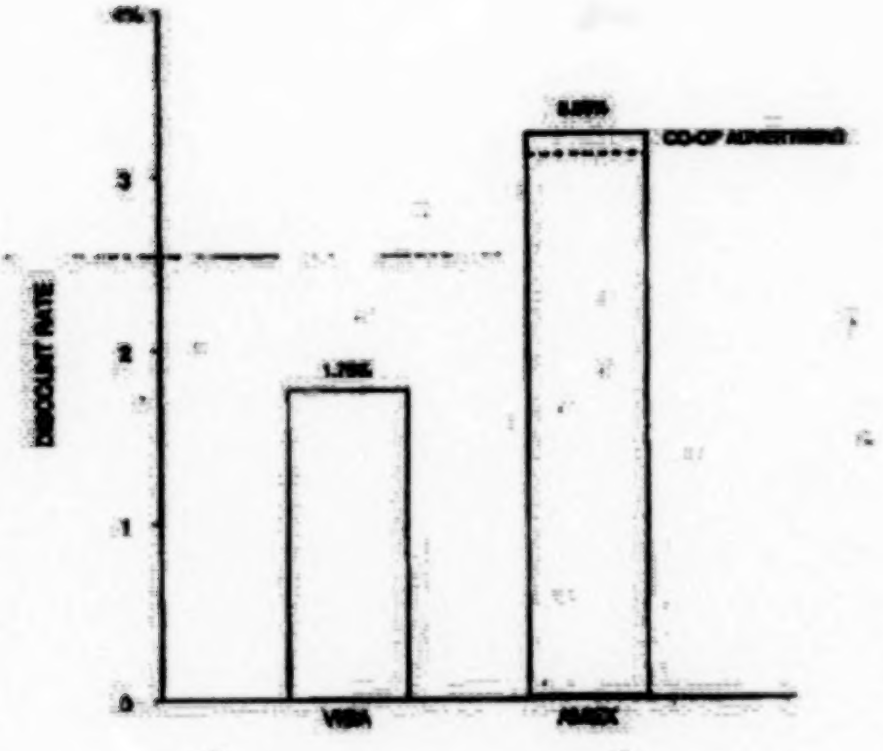


AMEX COMPETITIVE STRATEGY

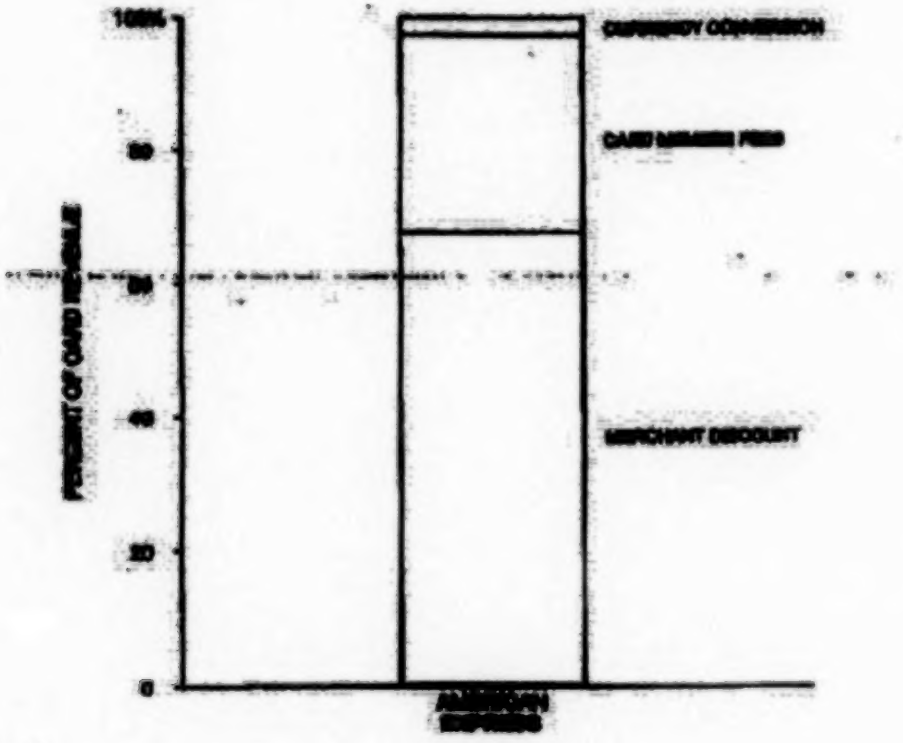
VISA STRATEGY

AMEX COMPETITIVE STRATEGY

MERCHANT DISCOUNT



AMEX COMPETITIVE STRATEGY
IMPORTANCE OF MERCHANT DISCOUNT



AMEX COMPETITIVE STRATEGY
MERCHANT PERSPECTIVE

"Merchant discount is the most important variable. We prefer Avis customers to use bankcards or Discover over Amex."

Assistant Division Controller
Avis Rent A Car, Inc.

"I would drop Amex. I absolutely hate it, but our chairman believes the Management Horizons data."

Director, Credit
Lechmere

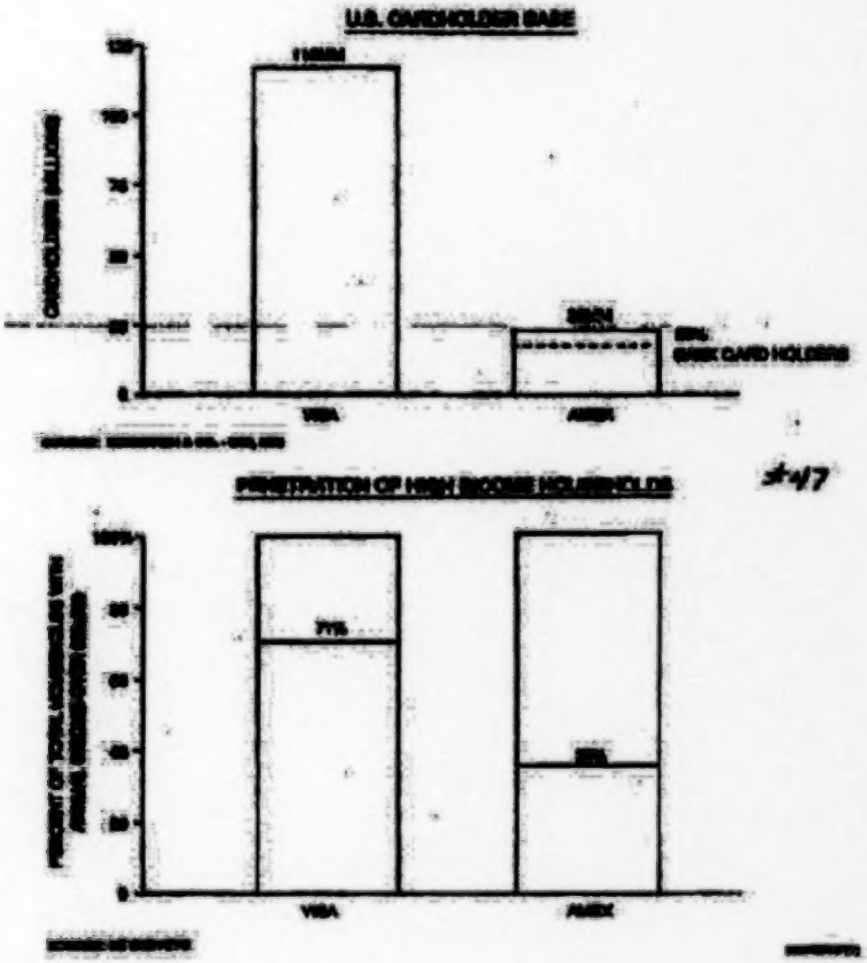
"We dropped Amex because pricing was too high and it didn't bring any incremental sales. There was minimal change in volume once the program was abandoned."

Corporate Controller
H.C. Prange Co.

"The big fallacy about Amex is that people think they provide a more demographically attractive customer... That may have been true ten years ago."

VP, Credit Operations
Bloomingdale's

AMEX COMPETITIVE STRATEGY
RELATIVE VALUE TO MERCHANT

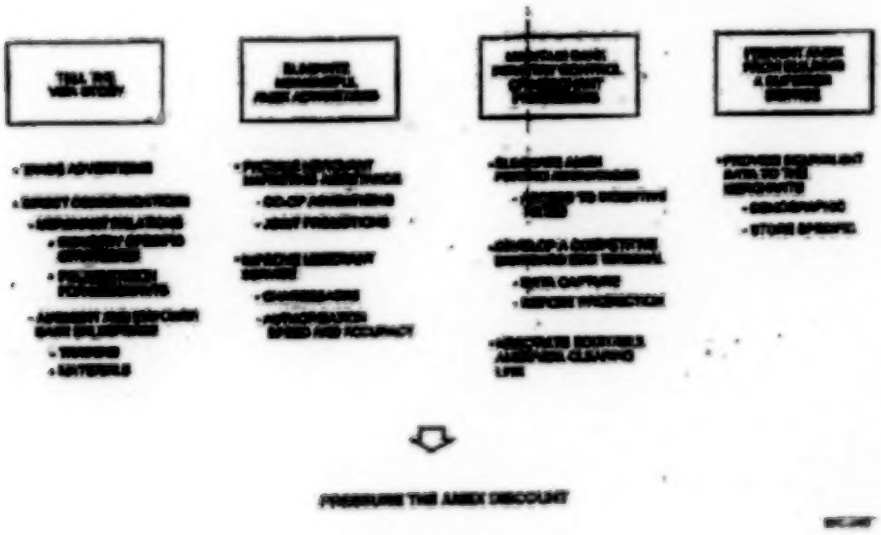


AMEX COMPETITIVE STRATEGY

AMEX STRENGTHS

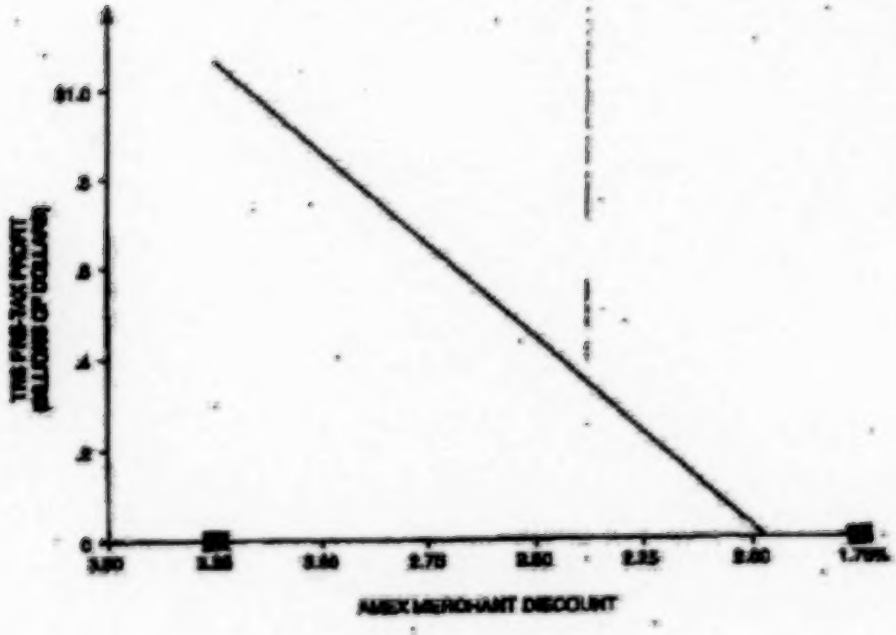
- Market themselves exceedingly well
  - Incremental sales story
  - Aggressive negotiating
- Provide value added services
  - Co-op advertising
  - Joint merchant promotions
  - Marketing advice
- Have the means to deliver message and service
  - Operations reps
  - Marketing reps
  - Promotion reps
- Building a potentially unmatchable tool for delivering merchant utility . . . Genesis

AMEX COMPETITIVE STRATEGY
VISA MERCHANT IMPERATIVES



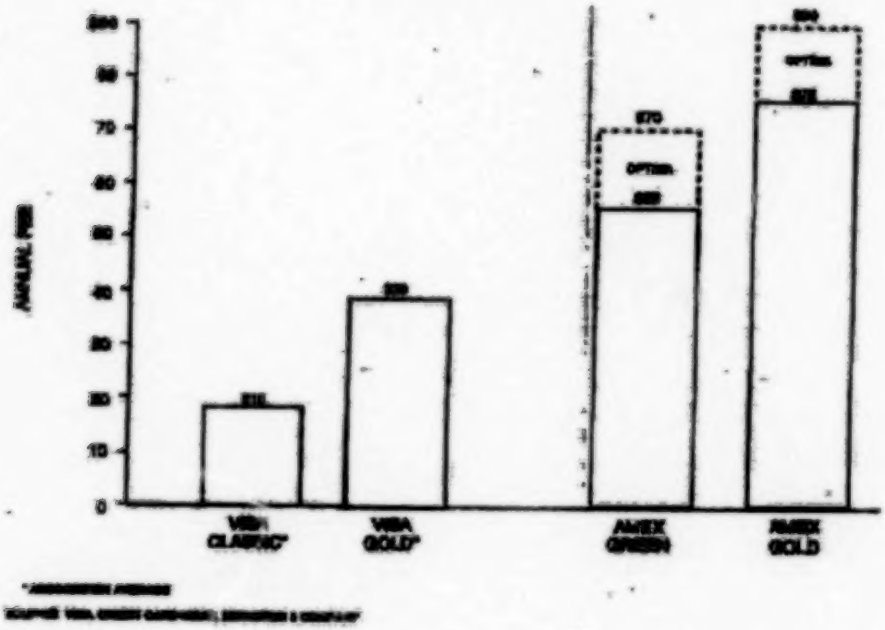
AMEX COMPETITIVE STRATEGY

IMPACT ON TRS PROFIT
MERCHANT DISCOUNT PRESSURE



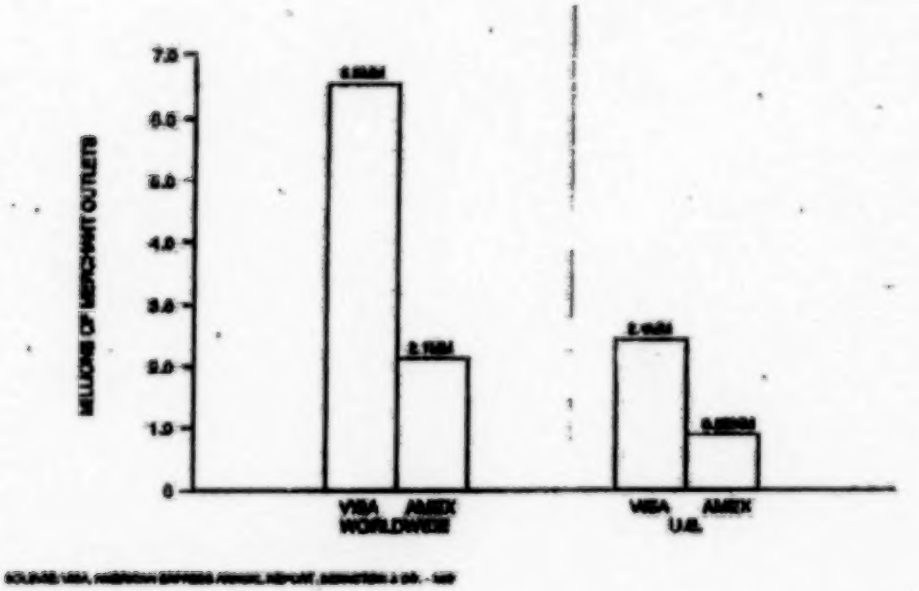
AMEX COMPETITIVE STRATEGY

CARDHOLDER ANNUAL FEES

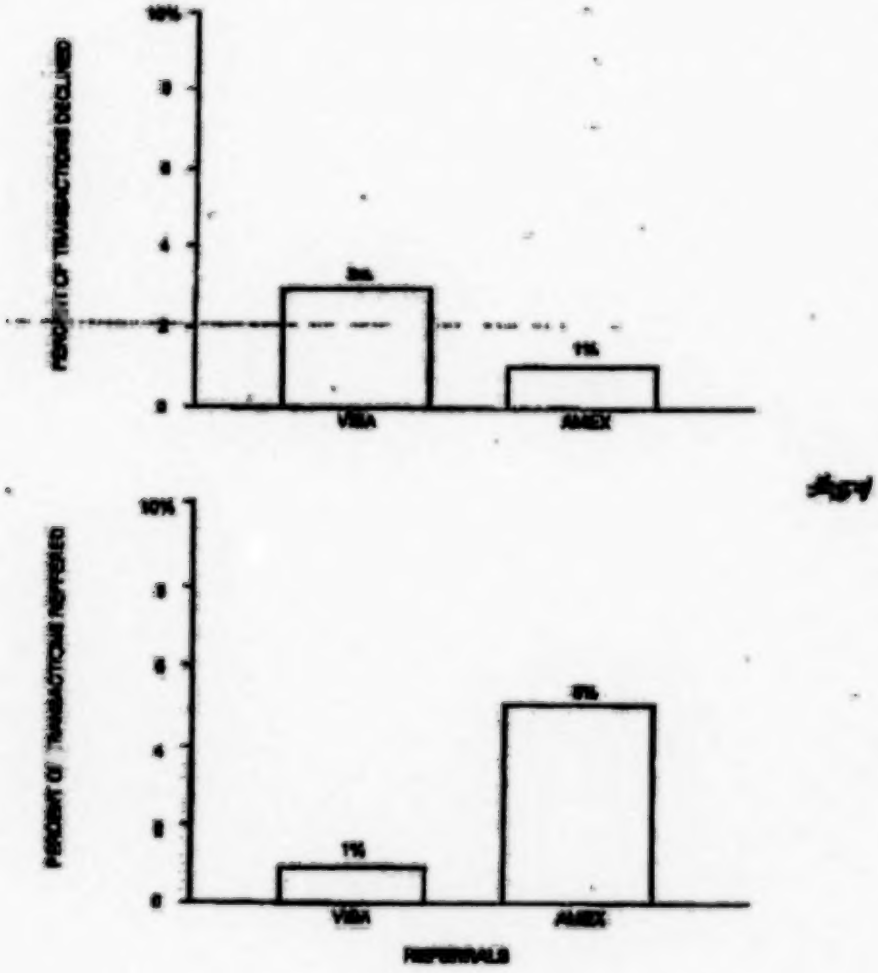


AMEX COMPETITIVE STRATEGY

RELATIVE ACCEPTANCE



AMEX COMPETITIVE STRATEGY
AUTHORIZATION PERFORMANCE



AMEX COMPETITIVE STRATEGY

AMEX ADVANTAGES OVER VISA

- Strong image awareness
  - Quality
  - Appropriateness
  - Worldwide acceptance
- Bias to authorize at POS
  - No pre-set spending limit
  - Low level of declines
- High quality customer service
  - Inquiry handling
  - Emergency card replacement
- Detailed transaction information
  - Country club billing
  - Annual summary

AMEX COMPETITIVE STRATEGY
VISA CONSUMER IMPERATIVES

Tell the Visa story

- Significant increase in educational consumer advertising
    - Acceptance, U.S. and worldwide
    - Appropriateness

Eliminate meaningful Amex advantages

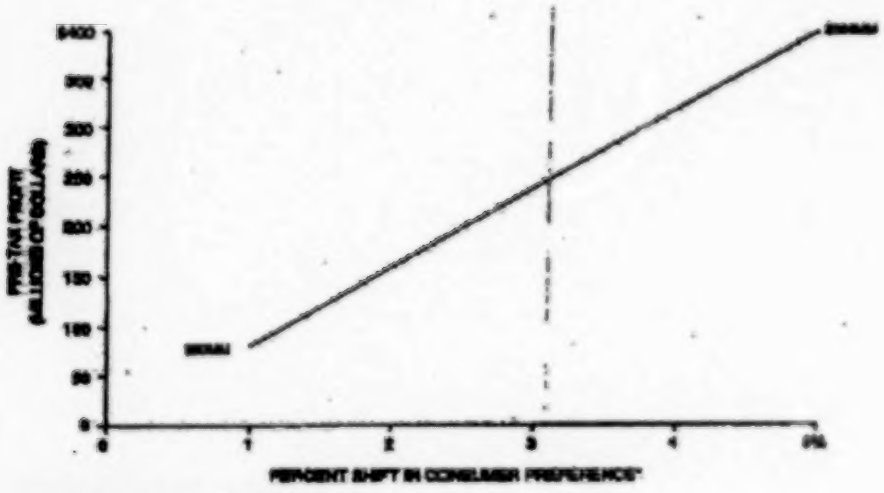
- Strengthen Visa image and appropriateness
    - Visa image advertising
    - Situational advertising
    - POS material distribution support
- Improve Visa authorization procedures
    - Reduce erronenous declines
    - Develop issuer performance standards
    - Encourage frequent credit limit reappraisal
- Enhance customer service
    - Quality assurance function
    - Improve communication
- Provide detailed transaction information
    - Increase data capture
    - Develop and distribute billing report software

Increase consumer preference for using Visa

AMEX COMPETITIVE STRATEGY

IMPACT ON ANNUAL BANK PROFIT

1992E



AMEX COMPETITIVE STRATEGY

CONCLUSION

- Amex is an enourmous threat
  - $1.25B potential cost to bank industry by 1992
- Amex has two main vulnerabilities
  - Bank dependence: not a fatal weakness
  - Premium price success cycle: will not withstand an attack from a determined competitor
- Visa should remove meaningful differences between itself and Amex
  - Weaken Amex's ability to compete
  - Increase Visa's market share

MARKET SHARE
THE WILL TO WIN

Kenneth I. Chenault

Establishment Services Worldwide Meeting
Puerto Rico
January 23, 1996

I. DEFINING WINNING AS MARKET SHARE.

- I'm delighted to be here. This is an exciting time for the company and it's an exciting time for our Establishment Services business. As many of you know, I have a special fondness for this group. I really do regret that I don't see many of you as much as I did in the past. You are an amazing group of talented people. It's gratifying to see the turnaround in our performance, and to see that people have been stepping up to the challenge.
- I want to commend Tom Ryder on his outstanding leadership. What he did was not just to devise a strategy. He really instilled in this organization a Will to Win, and he instilled in people a will to stretch themselves. Tom really loves the SE businesses. He likes and respects you people, and I know he's going to do a terrific job running International. We cannot be a growth company unless we grow outside the U.S. You prepared him well and we're fortunate to have him. Thank you, Tom, for your courageous leadership.
- I know how excited David is about working with you to address the challenges ahead. David is a tremendous executive. I feel absolutely great that he is at the helm. He's results-oriented, he cares about people, and he's focused on winning. There's no question he has what it takes to lead this organization to great heights.
- As we look at where we are today and where we're going, it's important for us to drop back three or four years, and remember that, at the time, a lot of people wondered if American Express would survive. That may sound dramatic, but in a real world context, it's not. Companies go out of

business. In fact, 40% of the companies that were on the Fortune 500 in 1985 are out of business today.

- As I've mentioned to some of you, I recently read a book by two Stanford Business School professors on this very subject. The book is called Built to Last. And the authors studied American companies to try to figure out what it is that gives companies staying power. What is it that enables companies to sustain leadership over decades rather than years.

- The authors found only 18 companies that are, in their words, Built to Last. These are companies that have been around for anywhere from 50 to 170 years. Some of what the authors found may surprise you. Some of it will sound familiar.

- First, they found that companies with staying power are built around an ideology that relies more on experimentation than on strategic planning. They're not saying strategic planning is not important. But, in fact, the key ingredient in these 18 companies was the willingness to experiment. The key to longevity, these authors suggest, is not just sheer brilliance. In fact, the key seems to be establishing the kind of organization whose values and ways of thinking can last through generations of shifting business strategies.

- And these companies, whether they recognize it or not, appear to have shared an adherence to the Chinese principle of dualism, wherein they embrace a series of opposites -- like stability and change, clarity and ambiguity, integration and autonomy. Companies with staying power have

broadened their horizons beyond the typically Western "either/or" approach.

- Now, I said some of this would sound familiar. And it should. Because American Express is one of the 18 companies held up as an example of what others should aspire to -- despite our problems of the last several years. American Express is on the list with Coca-Cola, Procter & Gamble, Motorola, 3M, Hewlett-Packard, Disney and others. We're on the list. You don't find, frankly, as many glowing paragraphs on us as you do some of the other companies. But we made the list. That should give us a lot of confidence.
- This book was not a PR effort. American Express had no influence on the academic study. But as outsiders looking across all companies -- in all industries -- American Express emerged over the long term as a winning company.
- While we have talked a lot about the will to win recently, I'm not convinced that we know -- and that we really understand -- that we have what it takes to win. We've been playing catchup for the past few years, and it can be demoralizing to see that Visa and Discover are growing faster than we are. Individual card issuers like MBNA and Citibank are growing faster than we are. We're also losing share to new payment instruments, such as debit cards.
- But we are turning American Express back to our long held position as a winning company. Three years from now, I predict we will be growing faster than the Card market and in many of our markets around the world, we will be widely recognized as

a winning company. And we will see that we went through a three-part turnaround to get there.

-- The first part of the turnaround was a Financial turnaround completed over the past 3 years. We sold off non-strategic businesses. We strengthened the balance sheet. We drove through the first phase of Reengineering.

-- The second part of the turnaround is both a structural turnaround and process redesign. This is the phase we're still in -- Reengineering everyone of our core business processes to achieve Best-in-Class economics, while also accelerating our cycle times and fundamentally redesigning our core processes from the customer's perspective.

-- We are ready now for the third, which we have begun. We are beginning the third phase of the turnaround -- a mindset turnaround.

- We have to shift from a mindset of survival to a mindset of winning.
- We have to restore our confidence as we market our current products, deliver our services and launch new products and services.
- We must, once again, have a collective pride in our Company.

• I think all of us here at this meeting intuitively want to help drive this mindset turnaround, and strengthen our ability to win in the marketplace.

-- First of all, I want to commend this group for your attitude, your concern for our SE

customers, and your consistently high energy level through a very stressful time.

-- I especially want to acknowledge the very creative and outstanding work being done by the New Business Partnerships team, by Tom Pojero and the ESA channel, Jim Howland and his team in Merchant Processing, Judy Hoffstein and Inside Sales, and, of course, Lew Taffer and the entire Travel SBU for your work in helping us to land our first two cobranding partnerships.

-- I could go on. So many individuals in SE made real contributions in 1995, and worked toward creating lasting value. I cite these few to illustrate that we had contributions from a broad range of activities within SE. We reached these objectives because you acted as a team.

-- I also think there are a number of skills and attributes within Establishment Services that I'd like to see adopted in other parts of the organization -- specifically with respect to opening new channels for our products and services.

- There's no doubt in my mind that this group can help drive the mindset turnaround at American Express.

II. THE MINDSET TURNAROUND

So let me turn this discussion to the key components of the mindset turnaround. How will we move from a focus on survival to a focus on winning?

-- First, we need to define winning. I will argue that the only real measure of winning is market

share. We will only win when we serve our customers better than our competitors. And while we can take some comfort in our customer satisfaction scores and in our earnings growth -- and lately, the price of our stock -- the only real way to prove that our customers prefer us is to measure market share. It's the only true barometer of success, and our progress against it will determine whether we have a viable and winning business in the future.

-- Second, we need to have confidence that winning is achievable and worth the price. While I strongly believe that we can and will win, I also know that it's not easy or risk-free, to grow faster than the market. We'll have to take calculated risks -- risks with pricing, risks with marketing investments, risks with new products, risks with new channels -- if we're going to get out in front of the competition and stay there.

-- We look at the consumer business. Citicorp and Discover are two key competitors. In our Corporate Card business, GE and soon AT&T are coming right at us. For SE, FDC has emerged as a formidable competitor, and there are others. We need to understand everything about them. We need to understand how we can best them. And there are other competitors from whom we need to take best practices. We need to understand that we will only gain market share if we take it from someone else.

-- Third, we need each of you to lead the charge on winning and market share. We're going to have to think more like General Managers, and

understand customer needs, understand the competitive environment and our business strategies. And we're going to have to become comfortable making trade-offs and establishing priorities. We're going to have to get more comfortable with the "dualism" I talked about earlier, and operate in an environment characterized by opposites such as ambiguity and clarity, stability and change.

- I know there are trade-offs we have to make. But our choice is not between market share and profitability. We have to grow both. Remember that the company with staying power, the company that's Built to Last, doesn't see things in the typically Western "either/or" paradigm. I would look to Coca-Cola, Schering Plough, and Gillette as companies that are aggressive about market share and economic profitability.

III. MARKET SHARE

Now I'm going to show you the root cause of my concern for our market share. (This is your only slide. Pause for effect. Let it sink in and leave it there.)

- Our share of General Purpose Plastic Spend in the U.S. has declined steadily since 1984. At that time, it was about 26%. Today, it's about 17%. We are not losing share as fast as in the last few years, but we are still losing share.
- Visa in particular is growing charge volume faster than we are. What's encouraging is that in last year's third quarter, for the first time, we grew at a rate that was faster than MasterCard. Our charge volume, measured at the Point of Sale,

grew 14.4%, while MasterCard's rose 13.4%. This is good news, but it's important to remember that we're trailing Visa -- and particularly Discover -- by a wide margin, and newer competitors, like FDC, are emerging.

- Outside the U.S., we're losing share in most of our markets. Charge, Credit, and Debit continue to grow at double digit rates around the world. And we're not keeping pace.
- Now we can debate whether General Purpose Plastic Spend is the right bogey. We can debate whether we should include cash advances as part of spend -- that may change the facts somewhat.
- I'll tell you what's not debatable. We are behind and we are going to have to grow market share substantially in terms of charge volume and share of outstandings. This is the game we are in for the Card business. We must become more relevant in the marketplace by becoming more relevant in our customers lives. We can't explain away our decline. We must reverse it.

IV. WHY MARKET SHARE IS ACHIEVABLE

- There are four reasons why I believe we can and will gain market share in our core businesses, especially the Card Business:

1. We compete in growth businesses, so there's still room to maneuver.
2. We have fundamental advantages versus competitors.
3. We have practical plans to address our core issues.

4. We have proven that we can gain share if we're willing to take risks.

- I've heard arguments that we should constrain investment in the Card Business. That it's mature. That the game's already over. Well, that's simply wrong.
  - -- Global charge volume exceeds $1.2 trillion.
  - -- The U.S., which is the largest of the markets worldwide, is growing in excess of 17%. And even through the recession of '90-'93, grew at a 13.7% rate. Emerging markets, such as Asia and Latin America, are growing at 25-30% a year. And these growth rates understate the potential of the market because they do not include debit and other new payment instruments.
  - -- General Purpose Plastic today accounts for only 8% of Global Consumer Spending. The Nilson Report projects that by the year 2000, charge volume globally will exceed $3 trillion and that by the year 2005, it will exceed $5 trillion.
  - -- The Card Industry generates more than $132 Billion in revenue, making it one of the World's largest industries.
  - -- These are not the characteristics of an industry that's mature and over-the-hill. These are the characteristics of a growth industry.
- The next question clearly is this: "Can American Express compete effectively with Visa and MasterCard?" That's a harder question, but I think we need to remember that we have some real advantages vs. the bankcards:

1. We're the biggest issuer in the World, which gives us powerful scale and brand leverage.
2. Only we and Citibank have global capabilities.
3. We have the strongest brand position in the industry.
4. We have unique product attributes and the perceived best rewards program.
5. We have the most attractive customer group.
6. We command premium prices in both our consumer and Corporate Card businesses and our S/E business.
7. We lead in convenience spending -- pay in full -- which is the fastest growing sector in the industry.

- I think we've proven that we can win in the marketplace when we've had the confidence to take risks.

  -- It wasn't that long ago that we believed we could not market Optima to the general public without cannibalizing the Charge Card. But a little over a year ago, favoring market share over short term earnings, we aggressively launched Optima True Grace. We developed a new marketing channel -- stand-alone credit card products. We've seen a healthy increase in our U.S. Consumer business. Yes, we saw some cannibalization. But frankly, some of the Cardmembers who migrated to True Grace are more profitable to the franchise with a revolving product.

-- We've also proven that aggressive Acquisition offers can increase response rates, leading to new growth in the oldest of our Card products. This is significant. For too long, we've labored under a myth that Charge Card is a handicap in today's marketplace. But I believe that with the right value proposition, the right combination of service and rewards, we can turn Charge Card into a growth product again. The American Express Charge Card is the lead entry in the fastest growing sector of the market -- convenience spend. And the Charge Card's positioning impacts our ability to command premium discount rates.

-- I think it would be easy -- and foolish -- for us to blame the economic structure of the Charge Card product for our loss of market share in the U.S. Contrary to popular opinion, fee does not drive this market. It drives part of the market -- no question. But with the Platinum Card and the Rewards Plus Gold Card, I think we've proven beyond a reasonable doubt that where the value proposition is compelling, the demand for premium products is strong.

V. ROLE OF ESTABLISHMENT SERVICES WORLDWIDE IN GROWING MARKET SHARE

- Some of you may well be asking yourselves, What does this have to do with my job? How can I possibly contribute to market share growth?
- Growing market share is not something that's done in a vacuum. Responsibility doesn't fall solely to Card Marketing and Advertising. In fact, I

would argue that responsibility for the most critical factors rests with the people in this room.

- Because while the competitiveness of our Card Value Propositions is driven by many factors, welcome acceptance is the core promise of Payment Systems products. Without welcome acceptance, the rest of our value proposition has only marginal value.
- I am fully aware that building full coverage is a daunting task, and expanding coverage must coincide with increasing Cardmember demand. We need to continue to push for creative solutions in both areas.
- For while our spending coverage stands at 87% in the U.S. -- and we're proud of that achievement -- there are markets overseas in which American Express has been marginalized. We have a coverage gap that is seriously undermining our relevance and, as a result, our ability to price at a premium. We must -- in the U.S. and around the world -- eliminate both the perception and the reality of the coverage gap. This is an incredible challenge.
- So we need to be far more serious about sharing our skills globally. We need increased global leverage in several areas, such as SE Pricing and Services, and we need to think about managing our some of our SE Customer Relationships globally.
- Remember that some of our leading competitors pursue basic operating processes more efficiently than we do. In some processes, our cost or margin

disadvantage is as high as 50%-75%. If we allow this to continue, we will lose.

- So with this new mindset -- as we take a more external approach and see ourselves as our customers and potential customers see us -- there can be no letting up on our determination to achieve Best in Class economics. It is absolutely critical that we achieve Best in Class, and that we reinvest in our future.
- And the dedication and commitment that this group has demonstrated to reengineering is just outstanding -- really a model for the organization.
- In many ways, Establishment Services leads the organization in being open to new ways of doing things. The ESA channel is a prime example. Many of you remember how horrified some of our colleagues were at the thought of working with external sales agents. I remember the reaction to this at our sales meeting in Hawaii. But ESA has become a critical distribution channel for us -- delivering 135,000 merchant signings a year.
- And Inside Sales has developed new ways of signing and servicing smaller merchants. You've found a way to make this channel profitable for us.
- New Business Partnerships has shown all of us how shared goals and teamwork can translate into performance. What a year this group had -- with supermarkets, gas stations -- and they capped this terrific year with Wal-Mart.
- And let's not forget that our co-branding opportunities begin here -- with the relationship in SE. Our co-branded Hilton Card -- launched only 4 months ago -- is doing better than either we or

Hilton thought. And our Delta Sky Miles Card -- on the market for all of three weeks -- is off to a great start. We're talking with other SE partners about cobranding opportunities.

VI. MOMENTUM

- Now, I want to stress here that we're not starting from ground zero. Our momentum is building.
  - -- We've launched more products and services in the past year than the prior decade.
  - -- We transformed Membership Miles into Membership Rewards, expanding our travel and non-travel rewards categories. We took the program into Australia, Argentina, South Africa, Taiwan and Brazil, bringing the number of countries in our rewards programs to 26. It is now the largest rewards program in the world.
  - -- These new value propositions give our Card members more reasons to insist on paying with American Express. And that's the most powerful endorsement anyone could ask for the price-value equation.
  - -- Our spending coverage, as this group well knows, is at 87%. We're signing a new SE every two minutes, and we're making progress in closing the Perception of Coverage Gap.
  - -- And we're thinking about new business opportunities in new and creative ways. We're forging alliances. Major bankcard issuers like Wells, Fargo and Bank of America are selling merchants on accepting American Express. Leading banks in Portugal, Greece, Israel and South Africa are issuing the American Express

Card and signing merchants locally. We're negotiating with major SEs for co-branding opportunities, and we're talking with major direct marketers about possible joint offers.

-- We're neutralizing Visa's efforts to get We Prefer Visa campaigns off the ground. We stopped at least a dozen such campaigns last year. We just wouldn't take no for an answer. And that's the kind of attitude we need to win in the marketplace.

-- And in Reengineering, we've also made significant progress. We've streamlined our Field Sales offices from 85 to 10. We've cut our support staff by 100 positions. In Merchant Processing, we've lowered our per ROC transaction cost by 14 cents -- or $14 million a day.

VII. DISAPPOINTMENTS

- But we've also had a number of disappointments.
- As you saw earlier, we are not growing as fast as the market either in Charge Volume or in Outstandings. This is the real score that determines if we are winning or losing.
- Our organization still does not move fast enough. It still takes us too long to launch products. While we've cut our new product development cycle time to a matter of months, remember that MBNA, on the issuing side, launches a new Card product every 7 days.
- Within Establishment Services Marketing, I think we need to take a hard look at our Co-op Advertising. Are we satisfied that it's really cost

effective? Does it add enough value to our Service Establishments?

- We have done a good job of reengineering U.S. Card, but we are behind where we need to be in International and Travel. In both cases, we have strong plans going into 1996. In staff reengineering, we have made good progress against our POA dollar targets. This year we need to engage in press redesign.
- Internationally, our Value Propositions are not competitive. Our competitors are growing Charge Volume in some markets at rates ranging from 40%-50% higher than we are in Europe to 3-4 times our growth rates in Asia and Latin America. New Card account growth is not strong enough and Card attrition remains too high.
- Addressing these issues -- fixing the fundamental value and market share gap -- is a prerequisite for achieving our vision of becoming the world's most respected service brand.

VIII. THE NEXT 6-12 MONTHS

- What does this mean for the next 6-12 months?
- Frankly, I'm not tremendously worried about 1996. The financials are difficult but achievable. I think we'll get to 90% spending coverage. The bigger challenge is in positioning the business for the next 2-3 years. What I'm concerned about is '97-'98. Because the closer we get to our aspirational targets, the harder it gets to deliver. This is why '96 is so important to our future. To meet our target this year, we'll sign an additional 300,000 SEs. We can do that. But for us to be able

to meet our targets in 1997, we have to sign an incremental 411,000 SEs.

- If you looked at a trendline of our revenues, you could feel encouraged. But that trendline is contingent upon our ability to maintain premium pricing. Do we think that's a sure thing?
- We've got to develop new revenue streams, new business opportunities, and we've got to sharpen our focus on Best In Class economics.
- One area where I know you're going to focus is in Client Management Reengineering. We have to fundamentally redesign the way we interface with our SEs to improve service while cutting costs. I believe you've identified $85 million in potential savings -- just from changing the way we manage our customer relationships.
- Another area, as I said earlier, is contractual advertising. We spend $110 million here, and we believe we may be able to reduce that by as much as $50 million.
- You need to know that the rest of the enterprise is working to support your efforts.
- We're going to optimize value from the products we've introduced in the past 12-14 months.
    - We're focused on Loyalty and Spend to build Market Share. We're going to be more aggressive about Card and SE acquisition -- especially in key International markets -- and we will continue to forge alliances that will help us increase our penetration.
- We realize that we can't win in every country in 12 months. We need to focus. So we've prioritized

markets, and we've built a $70 million War Chest to support strategic initiatives in 7 core markets outside the U.S.

- We will finalize our Brand Management Strategy to enable us to extend the brand to new businesses, such as Financial Services Direct, as well as extend the brand globally.
- In Reengineering, we will achieve our POAs for U.S. Card, and we will accelerate programs for Travel and International. In Staff Reengineering, as I said earlier, we will begin process redesign.
- And we will continue to build a strong and committed organization. We need to increase and improve our organizational capabilities, with an emphasis on developing leadership skills, making sure that we have the right people in the right positions, and that they are leaders rather than managers.

IX. Perspective

- With our momentum and with our enthusiasm for this new year, I think one of the things we need to guard against is becoming overconfident. Remember that nothing fails like success. As Harvey so often says, if you practice a set of skills successfully and long enough, you will groove yourself right into a rut. We have to be willing to invent the company that will put us out of business -- or someone else will. And I know you're going to be hearing from David on this critical issue.
- We need to think about our business in new ways. Rapid advances in information management and technology are turning entities that historically

have been our allies into some of our most formidable competitors. I'm thinking here of the airline industry in particular.

- But as we identify new ways to maximize shareholder and customer value, particularly in Establishment Services, we need to guard against creating new silos. The fact is, there is no SE business without the Card business and there is no Card business without SE. The two are inter-dependent.

- Our ability to maintain and increase our discount rate depends on our ability to deliver on the Promise of the American Express Brand So we want to develop new revenue streams, but in the context of strengthening both our consumer and Corporate Card businesses.

X. MAKING THE COMMITMENT TO MEET THE CHALLENGE

- Let me just close by making a few comments. I don't think the issue is our strategy. I don't think the issue is our tactics. I don't think the issue is the management. I think at the end of the day, what I hear from our shareholder constituency is, can we execute.

- Our competitors today are not coming up with better ideas than us. Our key competitors are more nimble, more flexible, more anticipatory and responsive to the marketplace than we are. That's part of what we have to change in a major way in our reengineering and our mindset turnaround.

- We are going to have to commit, and commitment means you've got to do it with your heart and your

mind and your soul if you're going to be a real winner.

- At the end of the day, most people don't want to win. They wish they could win, but they don't want to win. They are not willing to make the sacrifices. And that is a personal decision that you have to make.
- I think this company has the attributes, I think our employees have the attributes. You are a great group of individuals. I'm very, very proud to be associated with this group. But you've got to make the personal choice if you want to win.
- I think that we're built to last. But let me be clear: it's not enough to survive anymore. We've got to win.

Thank you.

[3226]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

United States of America
States of Arizona, Connecticut, Idaho, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, Tennessee, Texas, Utah, and Vermont

Plaintiffs

-against-

10-cv-4496 (NGG) (RER)
U.S. Courthouse
Brooklyn, N.Y.

American Express Company, et al.

Defendants

July 24, 2014
9:00 a.m.

Before:

HONORABLE NICHOLAS G. GARAUFIS
United States District Judge

* * *

[Testimony of Bradford W. Morgan (Visa)]

[3316] THE WITNESS: There we go.

BY MR. HAMER:

Q Do you have it there?

A Yeah, just a second.

Q So you state, "So while the bankcard associations have been pursuing cost reductions, efficiencies and lower pricing, American Express has been pursuing higher pricing to fund the creation and aggressive

marketing of product and service advantages." Do you see that?

A Yes.

Q And the next page, 880, you talk about the American Express merchant discount. This is the first full paragraph. Do you have that?

A Which full paragraph? "Key American Express"?

Q Yes. You talk about, "The key American Express vulnerability is their merchant discount. American Express is currently charging a discount of about 3.25 percent versus 1.75 percent for bankcards." Was that right at the time?

A Yes.

Q If you'd go to page 881 in your presentation. You noted to the Visa board that, "There is fairly good merchant awareness that there are more Visa cards out there than [3317] American Express cards. However, they may not be aware of the numbers."

A Yes.

Q A little farther down, you note that, "The merchant community also has not been told well enough that American Express's image of superiority among upscale cardholders is a myth." Do you see that?

A Yes.

Q If you go to page 882, you talk about part of your recommended strategy for Visa. Do you see the section in the paragraph that begins "First"?

A Yes.

Q You say, "First we need to do a better job of telling the Visa story to merchants. This should be done

through an effective trade advertising campaign and through direct communications. And part of those direct communications come from the merchant relations group which we are now organizing." And that was your group, right?

A Yes.

Q And was the focus of this effort to inform merchants about the price difference between American Express and Visa acceptance?

[3318] A It was to communicate everything about Visa and how it compared with its competitors, if they possibly could. It was not intended to focus purely on price.

Q Okay. And was part of the goal to help improve Visa's image among merchants and compete?

A Yes.

Q Okay. So once you made these presentations then, did you move forward with the strategy to do outreach to merchants?

A Once we had the merchant relations group formed, we did. I guess I should also point out that several members of the merchant relations department were working in non-T&E fields where Visa had limited acceptance and were really focused on getting greater acceptance in different parts of the overall market.

Q Okay. So are you familiar with the profit improvement calculator profit wheel?

A Yes.

Q And what was that?

A That was -- it started out as an idea of one of the guys working for me who had wanted to do a circular

wheel like you'll see in a paper wheel, cardboard wheels where a merchant could line up the difference between the fee they were paying to Visa and the fee they were paying to American Express. Put that against their annual American Express [3319] sales volume, and in the bottom window it would disclose here's how much additional profit you could get a year if you could transfer those sales from American Express to Visa.

Q Okay. Is that something that you innovated at Visa?

A The person, the guy who worked for me, Tom Edwards came up with the idea of the wheel. Tom was the only guy I had working in the T&E business. He was not going to be able to drop that wheel off at a lot of places. So I liked the idea a lot, but then I realized that I needed something where I could get the overall story out there without relying on a person to deliver it. So I wrote the copy on the profit wheel.

Q So if we can turn in your binder to Exhibit PX-0082. This is the Visa profit improvement calculator.

MR. HAMER: Plaintiffs offer 0082 into evidence.

MR. BRENNER: No objection.

THE COURT: All right. PX-0082 is received in evidence.

MR. HAMER: Thank you.

(Government Exhibit PX-0082 received in evidence.)

BY MR. HAMER:

Q Mr. Morgan, is this a copy of the profit improvement calculator you were just describing?

A Yes, it is.

[3320] Q What was the message that you're trying to convey to merchants when you distributed this?

A I was trying to primarily show them that they could indeed improve their profits by shifting more volume towards Visa. And I was trying very hard to say that some of the things that you believe about American Express aren't really true and here's the whole set of facts. So a merchant could look at it and say -- instead of thinking, you know, I can only get this kind of a business with an American Express card, I was trying to give them the facts that, no, those same people have Visa cards in their wallets.

Q And at the time, were a lot of merchants displaying signage that was shifting volume to American Express cards?

A Within T&E for sure. Again, they had the blue terminals at the point of sale. They had the check presenters. They had the tip trays. They had the "Take Ones." You saw an awful lot of American Express if you went into a T&E merchant. The most you might see of Visa at that point was usually a sign on the door that says Visa, MasterCard, Discover.

Q And what were the reactions of merchants to your profit wheel?

A Very positive.

Q And after it was distributed, did you learn whether it [3321] helped shift share from more expensive American Express cards to less expensive Visa cards?

A Yes. Shortly after we started distributing the profit wheel, a restaurant owner in Boston decided to get vocal about not accepting American Express or not

liking American Express, I can't remember which. And there was a picture taken of him holding a butcher knife with an American Express card secured on the end of it. And it appeared very prominently in a Boston newspaper, *The Globe* or whatever.

Q Was that the "Boston Fee Party"?

A That's what we jokingly referred to it as afterwards. For some reason, it got a lot of publicity and that picture and the story was picked up fairly broadly. From that point on, the whole ball got rolling.

Q The "Boston Fee Party" was something that was orchestrated by Visa?

A Not at all.

Q Was it an example of merchants expressing the higher rates of American Express cards?

A I believe that was the case.

Q Okay. So we've talked about the "We Prefer Visa" campaign a moment ago. Was that something that was one of your innovations?

A I was certainly a part of it. As this thing got rolling, we were looking for, again, ways we could help the [3322] merchant to act on this and shift business away from American Express and towards Visa. And I think – my recollection is that when my T&E guy was either meeting with Vail or whether they contacted him, Vail Resorts indicated they would like to work with Visa on a promotional basis. And the phrasing and the idea "We Prefer Visa" came out of that, as I recall.

And we liked the idea and realized we could use it again more broadly than just having one guy going around and selling it. So we began the "We Prefer Visa" campaign.

Q Okay. Did it involve an express statement by the merchant that they preferred Visa as their payment form?

A Yeah. We provided signage and decals and other pieces of promotion material to say "We Prefer Visa." And we hoped that the merchants would train people at the point of sale to specifically ask for a Visa card.

Q Did you determine whether it was successful in shifting share from your competitors?

A The first one at Vail was very successful, as I recall. I'm not sure I've got the exact number for you, 45, 50 percent, something like that.

Q Let's look at a document if you can turn in your binder, Mr. Morgan, to PX-0133. This is a Merchant Relations Fact Sheet.

A Okay.

* * *

[3409] time at Visa, there were bylaws which prevented Visa member institutions from issuing American Express card products, correct?

A Yes, yes.

Q These are the so-called exclusionary rules, right? You're not familiar. These were the rules that were at issue in some of the cases where you were deposed previously. Do you remember that?

A You know, I've been deposed for, what, the last eight years or ten years about stuff that happened 21 years ago.

Q Well, we can take notice of what that is. It's fine.

A Show me documents from the deposition. That might refresh my memory. But as I sit here today, no.

Q It doesn't matter. We'll move on. Just to make sure I understand the landscape, though, about what existed when you were there, on the merchant side, this "We Prefer" campaign was among the initiatives that you had -- that you hoped would weaken American Express's financial engine, I think is how you put it.

A Yes.

Q And keep AMEX as a niche product, I think were the words you used, correct?

A Right.

Q At the same time during your tenure at Visa on the consumer side, on the issuing side, Visa had these bylaws in [3410] place that limited American Express's ability to partner with banks to issue American Express cards, right?

A Yes.

Q So you had this "We Prefer" campaign on the merchant side and on the issuing side there were these bylaws, correct?

A Yes.

Q Now, you discussed with Mr. Hamer these new contracts you say came out in 1992, right?

A Yes.

Q New American Express contracts. And you looked in particular at a document that's been admitted as PX-84. It might be DX-7426 in my binder, but it's been received into evidence as PX-84.

A What's the number in this one?

Q This is the Hong Kong document. Why don't you look at DX-7426.

A Okay. I have it.

Q And if you look at Bates 556 of this document.

A Okay. I have that page.

Q And I think it was the Court asked you a question about what your understanding was about these bullets and these restrictions in these bullets and the extent to which the limitations on what merchants could do as described here did or did not exist prior to this point in time.

* * *

[3810]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
STATES OF ARIZONA, CONNECTICUT, IDAHO, ILLINOIS, IOWA, MARYLAND, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE, OHIO, RHODE ISLAND, TENNEESSEE, TEXAS, UTAH, AND VERMONT

Plaintiffs,

-against-

10-cv-4496 (NGG)
United States Courthouse
Brooklyn, New York

AMERICAN EXPRESS COMPANY, ET AL.

Defendants.

Tuesday, July 29, 2014
9:00 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

* * *

[Testimony of Professor Michael L. Katz]

[3821] Did the department ask you to consider whether the anti-steering rules adversely affect competition?

A Yes, it did.

Q And did you reach conclusions about whether they do?

A Yes.

Q And please tell the Court the principal conclusion that you reached.

A So my central conclusion is that the anti-steering rules harm competition and consumers, and consumers in this case means merchants and their customers.

Q Can you explain how the anti-steering rules harm competition?

A Well, fundamentally, I think a way to see it is ask what would happen if a credit and chargecard network was thinking about lowering its prices to merchants. Now, the reason it might do that is it would expect to get additional business, right. That would be the reward for lowering its prices would be the additional business.

Now, in the absence of anti-steering rules, what you'd expect to have happen is that some merchants would say well, now that this is cheaper for us, let's steer our customers, let's encourage them to use the cheaper credit card network and that would be the reward for lowering the prices, but in the presence of the anti-steering rules, the merchants are limited from doing that. So there's less substitution [3822] towards the network that's lowered its prices. Therefore there's less of a reward for lowering prices, there's less of an incentive to do it, so it's dampening or thwarting competition. It's taking away the award for competing harder.

Q Can you give me an example?

A Yes. As we'll see in a few minutes, the Discover network is an example of that where they had a

strategy where they were going to be lower-priced than other networks. That was predicated in part on merchants steering their customers to Discover, and when Discover learned that that wasn't going to happen because of anti-steering rules, Discover changed its strategy and stopped trying to be particularly low-priced to merchants.

Q Did you also consider whether the anti-steering rules have procompetitive effects?

A Yes, I did.

Q And what conclusion did you reach about the procompetitive effects?

A I considered several different theories, but I considered that when you sort of looked at the facts of them, that none of them generated significant procompetitive benefits and that none outweighed the harms I found earlier.

Q Before we talk about the rules further, did you prepare a slide deck that will help us walk through your analysis?

A Yes, I did.

* * *

[3827] recent years American Express, a blue line appropriately enough, the blue line is showing that American Express is now the second largest credit card network, followed by MasterCard, and then significantly smaller than that is Discover.

So one thing to note is there are only four competitors and three of them are much larger than the other one, and so that's going to raise questions about just how competitive this industry is.

Q So that dip that occurs in 2008/2009, what's that?

A That's the Great Recession.

Q Next slide, please.

Did you identify other key characteristics of the industry?

A Yes. A central feature of this industry is the credit card networks are two-sided platforms, which is to say that they're middlemen between merchants and their customers, and what this diagram is doing is showing you that while the network is the middleman, there are also other parties involved.

Q All right. And what do these boxes labeled "issuer" and "acquirer" represent?

A So you can see the network is in the middle and I've shown in parentheses underneath an example of the network of course would be Visa, as we were just saying. If you're a [3828] customer, a cardholder, you don't deal directly with Visa. You deal with the bank that issues your credit or chargecard, in this case the example is Citibank. So card issuers are just what the name suggests: they issue cards to the customer, they manage the customer relationship and the billing, and they serve as an intermediary between the network and the customer.

The acquirer is doing the same thing for the merchant, and First Data is one of the largest, probably the largest acquirer, and so they service the bank for the merchant and they serve as the liaison between the merchant and the network.

Q What functions do networks perform as middlemen?

A So the most fundamental function they provide is to have a set of protocols and procedures and standards that allow all these parts to work together. They also do things like they run communications networks to let them go together. Then in a different vein the important thing is they do branding. You know, Visa is one of the best known brands in the world. American Express is certainly a well-known and respected brand. They also set prices and they also set rules such as the anti-steering rules.

Q Why do you say a network is two-sided, the platform is two-sided?

A Because its business is to bring together two different [3829] sides. Its business ultimately is to facilitate transactions between merchants on one side and their customers on the other.

Q Who are the consumers of network services in this diagram?

A Both merchants and customers are consumers of the network services.

Q So you're saying merchants are consumers?

A Yes, for these purposes. And that's one thing, again I'll try to be consistent in my terminology and say customers, but I'm sure at some point I will slip into also using the term "consumer" to mean households and individuals, but for the technical economic purposes, merchants are consumers.

Q You've written about network effects.

What do network effects mean in the context of this industry?

A So a network effect generally is when the more people consume a good or service, the more valuable it is to consume it. The classic example being the telephone network, that the reason you have a phone is so you can call other people.

Well, in this industry the way it works is, think about it from the customer's perspective, why have a credit and chargecard is so you can use it, and for you, the more merchants there are on a particular network, the more valuable that network is. So that's a positive network effect where

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[3834] A No, the network doesn't, and that's an important thing to understand in thinking about the pricing in this industry. It's basically something you can think of as being passed through by the network where it's -- think ultimately how the money is going, it's passed through by the network from the merchant side, from the acquirer to the issuer.

Q Can we have the next slide, please?

Summing up, what are the key features of the credit card industry that we should remember as we talk more about it today?

A So as we just saw, there's a small number of networks. We want to keep that in mind in assessing competition. It's going to be really important to think about the fact that merchants and their customers are jointly deciding which payment instruments to use. In fact, I mean that's what steering is all about is the interaction between the two sides in order to make that joint decision. And then the other thing to do is that the principal reason that merchants accept credit and chargecards is because that's what

customers want because in terms of cost, merchants generally find credit and chargecards to be one of the most expensive or the most expensive payment instrument to accept and in general the reason they're doing is because that's what their customers want.

Q Can we have the next slide, please?

* * *

[3836] in much more detail, is value recapture by American Express which is a set of targeted price increases, and the point I'd like to make here is that the anti-steering rules resulted in value recapture being more profitable than it otherwise would have. So there was less pressure to hold price down than there would have been absent the rules.

Q Let's go over all three of those one at a time.

Can we have the next slide, please?

What happened with Discover?

A What happened? Well, the first thing is Discover entered the market in 1985, mid-'80s, and going along for several years and then what started to happen -- first of all, I should say what their strategy was. They wanted to come in and they saw themselves as offering something that offered particular value to merchants. They had although for the merchants a low-price strategy, but as the quotation on this slide is emphasizing, they also did things to be attractive to cardholders and they were pioneers in cash back rewards and, as I said, things like no annual fees. So they came in and that was their strategy.

Okay, then if we could turn to the next slide. What happens, so they had -- they came in with that strategy, and then in the late '90s, what was happening is Visa and MasterCard started raising the rates to merchants, and American Express at the time already had higher charges to [3837] merchants, and so what's being captured in this long quotation, which I will spare you my reading of, is that Discover saw this as an opportunity, because what they saw happened is, okay, everybody else is getting more expensive, we're not going to follow them up as they do that and this will be our chance to gain share.

Q All right. Can we look at the next slide, please?

A Okay. And as you see, because that was from, that quotation was from a speech in 1999, I put this next slide up just to show, and I apologize it's hard to read, but this is the best copy I could get a hold of. Remember that speech was in 1999, so it's on the left side of this diagram and it's just to show that indeed MasterCard and Visa were raising their rates. The speech mentioned there had been a price increase in the previous year and the year after that, and in fact as you see, they were going up at that time.

Q So the bottom two lines on this chart are the MasterCard and Visa rates; is that right?

A That's correct, and then what it's showing on the vertical axis is their discount rates.

THE COURT: Is this a public document?

MR. CONRATH: This was I think confidentiality had not been claimed on this slide, as I understand it.

Is that right?

THE COURT: That's fine. I'm just checking. Go [3838] ahead.

BY MR. CONRATH:

Q Next slide, please.

A Okay. So what happened, as I said, is the prices were going up to merchants, and Discover saw this as an opportunity and so what they did is they reached out to merchants. The earlier quotation was from a speech doing that. The excerpt here is from a letter that was sent out to merchants and pointing out to them, look, they have -- it says the response to Visa and MasterCard, but it's referring to their having increased their prices. It says look, we want to work with you, you know, here's ways to do it. And it's just one thing to note here that this is just as an example of it, it says we've enclosed signs to display at the point of sale. But fundamentally, the strategy was to get merchants to steer their customers to Discover and then that would be Discover's competitive reward, if you will, for having given the merchants a good deal.

Q The next slide, please.

Was this strategy successful?

A No, it wasn't.

Q And explain what's on this slide about why that strategy was not successful.

A So what we've identified here is that a central reason it wasn't successful is, as I say, it was predicated on the [3839] merchants were going to -- Discover thought they would have this better deal for merchants, merchants would steer their customers to Discover, Discover would gain sales, gain market

share. Didn't happen. They didn't see much of a response, as this quotation of earlier testimony in this trial is describing. They didn't see much of a response, and when they looked into why, when they talked to merchants, the merchants said well, we can't steer because we're blocked by anti-steering rules.

Q So what did Discover do with its low-priced strategy when it realized that merchants couldn't steer to it?

A It moved to a different strategy and it's moved to a strategy much more of pricing similarly to Visa and MasterCard, which we'll see on the next slide.

MR. CONRATH: Could we switch the monitor at this point in time?

A Okay.

THE COURT: Go ahead.

Q So now if we could have the next slide.

A As some of us can see, so again, I don't think it -- well, maybe it's in the old days they didn't have very good technology for copying this. Again, I apologize, it's hard to read the slide, but if you look along the bottom, I think this part is not confidential, you see it's broken out into the low cost provider strategy and when they say closed competitor gap [3840] and then the breakpoint between those is 1999 which is when that speech was made and when this initiative occurred, and so what was happening is Discover had been going along, and I describe this in general terms, their prices had dipped and come back some, but then when they saw that that initiative didn't work out at that breakpoint, you see they then just

steadily increased their prices to merchants following that because that's when they abandoned the strategy of trying to be a particularly low-priced network to merchants.

Q So what has been the effect on merchants and customers as a result of Discover abandoning its low price strategy?

A Well, so as a result of that, merchants are paying higher prices for the use of Discover cards and presuming for the use of other credit and chargecards as well because now there's less pressure on the pricing there, and then that means that an economically rational merchant is going to pass those higher costs on to its customers, and even though it may be difficult for anybody to perceive that because it's a small amount for any one customer, that adds up ultimately to substantial amounts of money. So customers ultimately are paying more at the merchants and that includes people who use credit and chargecards, but it also includes people who don't use them.

Q So is it your opinion that the impeding of Discover's low-cost strategy by the anti-steering rules adversely [3841] affected competition?

A Yes.

I just want to be clear about one thing. When I say -- when you say the rules, the anti-steering rules were in effect at the time. So were the MasterCard and Visa rules. So my testimony is that those rules at this time collectively did it, but it's also certainly my conclusion that had it been the anti-steering rules of American Express, the rules, been in place by themselves, they would have had this effect.

Q Next slide, please.

And this is public, Your Honor.

(The above-referred to exhibit was published.)

Q Do you think that Discover would use steering strategies in the future if the anti-steering rules were lifted?

A Yes. At trial earlier, Mr. Hochschild from Discover testified to that extent and that's what this quotation is showing. It said that if merchants could steer, that Discover would return to having this price strategy of lower prices to merchants in order to give the merchants incentives to steer and certainly Discover would hope to get them incremental volume which would make the lower prices profitable.

Q And is that consistent with economic principles?

A Yes, it is.

Q In what way?

A It's really in a sense he's saying – he's saying what I

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[3844] Q Would you consider the "We prefer Visa" preference campaign to be a form of competition on the merits?

A Yes.

Q And can you explain why? What was the effect on merchants and consumers?

A Well, again because what it's doing is they're saying, well, even if they don't offer any incremental rewards to the merchant, what it's saying to the merchant is we'll work with you to steer customers to

what's the cheaper way of paying things. So there's a benefit right there. The other thing is there's benefits when the -- when the network, benefits to the merchants if the networks compete to have that preference relationship and they offer various financial incentives to the merchants.

Q Are you aware of an instance when MasterCard had a preference campaign with Travelocity?

A Yes, you said they had a preference relationship with them, yes.

Q Can we turn to the next slide, please?

What conclusion do you draw from the information that's on this slide?

A Well, the first box, the one on the left, and this is again from trial testimony earlier this month from MasterCard executive where she was saying that they had this preference relationship with Travelocity and then after pressure from [3845] American Express they ended it, and the MasterCard executive indicated that then it had less of an effect, that they were less successful at shifting share and that the campaign was degraded. And so again it's saying it's a lessening of competitive pressure here as a result of this.

Q And is it consistent with economic principles, can you in light of economic principles evaluate whether it's likely that MasterCard would conduct similar campaigns in the future if anti-steering rules were lifted?

A Well, I mean, certainly they would have, as a general matter, they would have the incentive to do that, see a way, and in fact they've indicated in

testimony, right, that they would be interested in doing it and that if their rivals did it, that that would put competitive pressure on them.

Q So is it your understanding that the anti-steering rules, to the extent they impede preference campaigns, adversely affect competition?

A Yes.

Q Next slide, please.

Professor Katz, the third item you mentioned under actual anticompetitive effects was value recapture.

What is value or was value recapture?

A So it was a set of -- it was a pricing and set of pricing initiatives by American Express where it raised its prices to targeted merchant segments.

[3846] Q And what is the connection between value recapture and the anti-steering rules?

A Well, as was alluded to briefly earlier, the anti-steering rules resulted in the charge volume or the demand for American Express's services being less responsive to the merchant discount, and when demand is less responsive to the price, in this case less responsive to the price charged to the merchant, that results in the profit maximizing price being higher. So that means, in this case, the American Express with the anti-steering rules in place has a higher profit-maximizing price, so it's telling us that had the anti-steering rules not been in place, American Express would have faced greater competitor pressures or greater downward pressures on its pricing that would have moderated the price increases.

MR. CONRATH: Could we switch the monitor, Your Honor, before we go to the next slide?

(Pause.)

Q All right. Next slide, please.

Professor Katz, did American Express assess the profitability of its value recapture of price increases?

A Yes, it did.

Q And did they do it separately for unmanaged and for managed merchants?

A Yes.

* * *

[3850] value recapture was profitable.

Q And that's this particular element of value recapture, that amount on this slide?

A That's right, this particular one, and then if you look more broadly for managed merchants that they generally found that few, if any, dropped and I didn't see any concern with incremental suppression.

Q So in sum, how does Amex's ability to implement value recapture relate to the anti-steering rules?

A Well, had there not been anti-steering rules, one would have expected to see the managed merchants engage in incremental suppression and then American Express would have had to take that into account and when they asked themselves the question is it worth it to raise prices or will we lose too much business, there would have been another source of substitution away from American Express that would have been another source of competitive pressure to hold prices down.

Q All right. Could we switch the monitor again, Your Honor?

THE COURT: Public?

MR. CONRATH: Yes, to public.

(The above-referred to exhibit was published.)

MR. CONRATH: And can we have the next slide before we do? I'm sorry, I got that backwards. I apologize, Your Honor.

[3851] Q So looking at this next slide, is it -- could merchant steering have been used to respond to the value recapture of price increases?

A I mean, certainly it could have in principle and we would have expected it to have an effect, and what this slide is showing is that earlier at trial, an executive from Southwest is testifying that in fact had they had the chance to do it, they would have tried to use steering to, as he said, mitigate the price hike that they were getting from American Express.

Q And could merchant steering be used in the future if there were price increases if merchant steering were allowed?

A Certainly.

Q Next slide, please.

What do you conclude, Professor Katz, from these three instances of steering and price increases about the impact of American Express's anti-steering rules on competition?

A So the bottom line is that the anti-steering rules harm competition on the merits and they do so substantially, and we saw that with Discover where

one of the factors when they were abandoning this strategy of being particularly low-priced to merchants in the face of the -- of anti-steering rules; saw it in the case of the preference campaigns and preference relationships that these things can -- that such relationships can be effective in moving share and that they can create and [3852] do create competitive pressures and pressures to respond by competing on the merits; and lastly, value recapture is illustrating just sort of the detailed mechanism by which steering takes away one of the avenues of competition.

Q So you've told us that the anti-steering rules lead to higher prices to merchants.

Could the higher prices affect prices to cardholders on the other side of the platform?

A Yes, they could.

Q And in what way?

A Well, remember these are two-sided platforms. So we need to keep track of what's going on on the other side of the platform, see how these interact, and when -- when merchants are being charged higher prices, that can give the credit and chargecard networks incentives to then give lower prices to the cardholders. Think about it in terms of rewards because when we start talking about negative prices, at least I get confused.

So it works this way. If I'm charging the merchants more, gives me incentives to give bigger rewards to my customers. Why am I doing that? Well, because the higher rewards are going to get them to use their cards more, and since I'm charging the merchant more money, every time I succeed in getting my

customer to use the card more, I'm getting more money. So economic principles will tell us that [3853] if the networks are charging higher prices to merchants, some of that's going to get passed on to the cardholders.

Q So does American Express pass through all of the merchant discount that it collects to cardholders?

A No, they don't.

Q Next slide, please.

How do you know that?

A Well, one thing is American Express says so. This is a statement by their CFO, I guess this is an investor call or investor conference. I apologize, I can't remember which. But anyway, it's a statement by their CFO pointing out that they pass some of it on, but that they, as it says, part of it we drop to the bottom line, which of course there's nothing wrong with that, they're in the business to make money, but it is a fact they keep it.

It's also true if you look at data for their rewards expenses, that's something that there's some dispute among the economic experts in this case on the exact numbers, but I think there's no disagreement that rewards payments are well less than half of the discount rates, significantly less, and it's certainly my view that if you look at, and my conclusion, if you look at value recapture that when American Express raised the prices they were charging the merchants, they did not pass that through to cardholders.

Q What does economic theory tell us about whether a [3854] network's higher prices to merchants resulting

from anti-steering rules would be passed through to cardholders?

A So your question's bringing up is one of the things that when we talk about higher prices to merchants and what the effects are on cardholders, it depends in part on why the prices are higher and if the prices are higher as we're talking about here because the merchants' ability to respond has gone down. So one side of the market now is less responsive to price, that's why the price is going up to merchants, economic theory says the networks are going to keep some of that for themselves. They're not going to pass it all through because they're taking advantage of the fact that demand is less responsive to price, and so there's a clear prediction that that's what will happen. That in this particular case, there will be less than a hundred percent passthrough, and as I said, in fact the evidence indicates, there's less than a hundred percent passthrough.

Q So you've said that American Express does not pass through a hundred percent of the merchant fees to cardholders.

Assume that it were true that a hundred percent of the higher prices caused by the anti-steering rules were passed through to Amex cardholders, does that mean that merchants and their customers are not harmed?

And I think we need the next slide here.

A No, it doesn't. If you think about it, what this slide [3855] is summarizing is that the anti-steering rules are going to raise merchants' costs, okay, first off for the reasons we talked about that there's less competition among credit and chargecard networks

and also even taking the prices as given, even ignoring that aspect of generally raising charges to merchants, you've also got the thing that the rules stop merchants from pointing or steering their customers to cheaper chargecards or cheaper credit cards, okay, and those two effects then are going to result in the merchants having higher costs of accepting appointments and then they're going to -- an economically rational merchant is going to pass that on to its customers.

Now, exactly which ones it passes it on to depends on how much it engages in any sort of targeted discounting or charging different prices for different payment instruments, but generally merchants are charging the same price for everything. So what's going to happen is prices are going to go up with the merchant for everybody, including people who are not using American Express cards, and those customers are going to be worse off.

So for example, if you're somebody who is going into a merchant and you always pay with cash or you always pay with a debit card, you're going to be paying higher prices and the fact that some or all of the credit card users are getting rewards is not going to help you.

* * *

[3957] of insistence is getting at if I'm a merchant and I accept American Express cards, I'm going to have some volume of business that uses them and if I stop taking American Express cards, I'm going to lose some of that business, and insistence is a measure of how much I'm going to lose.

Q And what's the relevance of insistence to your evaluation of whether American Express has market power?

A Well, insistence is a key source of market power because it's explaining why it is that merchants are willing to pay more for American Express.

Q And I should say here is insistence your term, or did you pick it up from American Express?

A I've certainly used the word before, but using it as a term in talking about insistence and insistence value, that's from American Express documents.

Q Could we have the next slide, please?

MR. CONRATH: And this is confidential, sorry. Are we still on confidential mode?

THE COURT: Yes, we are.

Q How does the concept of insistence enter into American Express's pricing to merchants?

A Well, what this document is showing is how American Express thinks about what insistence means for its pricing. So as part of how it evaluates things. And what the document is doing is it's starting with the baseline value and what [3958] that baseline value, as you see in 1 how they're interpreting it, they're saying, well, what does it cost the merchant to accept Visa and MasterCard's credit cards because Visa and MasterCard credit cards are their big, that's their competitor.

So then they're saying, well, so we could charge that amount because, you know, we go back and think about in terms of the logic of the slides with the green and the red boxes. If we just charge the same

amount as Visa and MasterCard, then there's not going to be a rate differential. So the merchant's not going to have an incentive to want to move away from us because they'll say look, we're the same price and Visa and MasterCard, why would the merchant care which one is used.

All right. So then they ask themselves, they said, well, we'll start from that baseline of our competitors and now let's take into account insistence, and what's shown here, and maybe we could highlight it in red, what they do is they're asking the same question of the merchant: How much are you going to lose, okay, if you stop taking American Express? And so they calculate this insistence value, if we could do the next callout, and they break insistence down into two parts. The CM is for cardmember. They're saying look, there's walk-away insistence, the people aren't going to shop with you so you're going to lose the business, and then the [3959] other callout is what they call the spend less, which even if they continue to shop with you, they're not going to spend as much money. And so what the boxes above that are doing is saying we're figuring out then how much money is that worth to the merchant, right, given that they know that the merchant would lose business by not accepting us, American Express, so how much more can we charge than MasterCard and Visa are charging for their credit cards, and this is again is charging to the merchant. So that's what those amounts are saying is this is how much more that we can charge.

Then the rest of the diagram is showing things or ways American Express creates value other ways. And then if you go to 4 they're showing certain things

with operational costs for merchants, they're saying, you know, these policy, their policy driven costs for merchants, and again that gets back to this question that the issue for merchant, it's not just about what it pays for a payment instrument or what it pays for a credit and chargecard. There are also other costs associated with it.

So they very much look at insistence as something to think about when evaluating their pricing because it's giving a sense of what sort of premium they can charge over their competitors Visa and MasterCard and for it still to be rational for a merchant to accept it.

And now if you go to sort of the tall white box on [3960] the right side next to the black box, what they've done there when they say the value surplus and they say when we put all the pieces together and the biggest components of that value surplus are the insistence numbers, when we put all those pieces together, that's how much we're worth to the merchant than MasterCard and Visa. That's really the language I was talking about before, that's what you're going to lose because of the insistence and some other factors if you don't take us.

And then what they're doing in the black box is their labeling. If you look at that dashed line, the bid above says well, this is how much we charge today, the part above that dashed line, this is how much we charge today and this is showing, and this is just an illustrative example as it shows here, it's saying our value to the merchants that we get from switching to other things is bigger than the premium we are charging. So what this is showing though is that American Express recognizes insistence is one of the

things that gives them the ability to charge merchants higher prices.

THE COURT: But they don't charge the full value surplus?

THE WITNESS: No, they generally don't.

THE COURT: According to them.

THE WITNESS: And I agree with that and we will come to that, Your Honor, we'll look at some specific calculations by industries that this is clearly something they use as part [3961] of an overall process, but they're not literally going up to these numbers because as we'll see in some cases the numbers are very high, we'll see when we get to them, but they're very high numbers, but what it's doing is it's identifying the source of the ability to charge higher prices and then giving a sense that there's a lot of room for them to charge the higher prices, but, you know, American Express does bargain with their merchants, so merchants are getting surplus too and, you know, why I'm going to focus on here's why they can charge merchants more, of course there are things offsetting that and what we're looking at really is the balance and that's why they're not going to get all of that surplus, some of that is going to go to merchants. But the point that I take away from my economic analysis though is there is a bunch of surplus there and which is translating into the ability to charge higher prices.

MR. CONRATH: I probably should have mentioned, by the way, Your Honor, that you might recognize this document and one very much like it that Mr. Funda talked about earlier in the trial.

BY MR. CONRATH:

Q And can I just ask you one thing, Professor Katz.

That baseline cost, the starting point on this calculation is Visa and MasterCard credit; is that right?

A Yes, that's what it says.

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[3985] to market power; is that correct?

A That's correct.

Q Can you explain what value recapture shows, about whether American Express has substantial market power?

A So as we were discussing earlier today, they had -- value recapture was a targeted -- set of targeted price increases, and it illustrates my conclusion. It illustrates the successful exercise of market power. American Express was starting from prices that were not below the competitive levels. They were prices -- they were being charged in a concentrated industry with other firms have been found to have market power, that were being -- the prices were in the presence of the anti-steering rules, which certainly my conclusion, further elevated the prices. I think there's no assertion by anyone that they're actually lowering the prices.

The procompetitive benefits don't have to do with that. We're starting from a level where the prices are at or above competitive level and we're raising those. And when we see what happened is they increased the prices on the merchant side. They were not offsetting changes on the cardholders' side, so that the net price, if you will, the two-sided price, increased, and that those two-sided price increases

were profitable. They both raised revenues and they raised profits.

MR. CONRATH: Could we look at the next -- can we [3986] change the monitor and then look at the next slide? Sorry, your Honor. Okay. Next slide.

Q Professor Katz, is this an example of value recapture?

A This is showing the discount rates American Express is charging to the top ten airlines plus another airline category over the period starting before value recapture and running through. And if you look at that, if you look, for example, at the top line, Delta, I won't call out the numbers, but you'll see between the start of the period and the end, there was a significant increase in the discount rate charged to Delta. And if you go down the list, comparing them, you'll see that with the exception of Air France that all of them went up, and that American Express instituted price increases for the top nine airlines.

MR. CONRATH: Could we take a look at the next slide, please?

Q What does this next slide show?

A Well, surprisingly, American Express valuated the profitability of what they were doing, and what this slide is showing is the results of one of their analyses, where they were looking to assess how it had done. And what this is doing is identifying the effects of the program on their revenues and on their average discount rate. And as you can see, in the one number that's circled in the red ellipse, it's saying that their U.S. weighted average discount rate went up [3987] by that number.

And the other thing they're doing is they've identified the total benefits or the cumulative benefits of these different initiatives, because the way this chart is working is that box shown for 2006 is the incremental PTI they got from the 2006 initiative. And then the box next to it, the white box, if you go over to 2007, is saying what were the affects of those 2006 initiatives when we continued those through to 2007. And then that's why that box carries over to the other years, including the forecast. And then that black box, if you look at 2007, that's on top of, then that's the value of the 2007 initiatives that then carry across, and that's why the later years have more boxes.

And they concluded -- and they were projecting that the total amount of that would be that number shown circled in red, where it says "incremental pretax income," although I should note that in deposition testimony that they're saying that that's more of a revenue change, and there were some offsets, which we will talk about, but, as we'll see, the offsets were far below that number.

MR. CONRATH: Can we take a look at the next slide, please?

Q So what does this next slide show?

A So this is one we looked at before, and as an example, but just generally illustrating the point that almost no [3988] managed merchants dropped, so American Express didn't suffer from attrition from doing this, and that they generally gained from doing it. Although, as mentioned in the title of this slide, it's not that this -- that they just automatically did everything they wanted to, they did in some cases

have to give incremental marketing funds to merchants, so that was a bit of a concession.

But if we turn to the next slide, we'll see -- this is a slide, an American Express internal document again -- that they concluded -- as we can see the pop up, they concluded that the revenue benefit they got from this, from having value recapture, in their words, was substantially larger than the advertising promotion, so substantially larger than the marketing funds that they had to give to merchants. So they concluded that these price increases from profitable for managed merchants. And this is one document, but there are others that reached the same conclusion, and their executives have said that they found it overall was profitable.

Q All right. That was managed merchants, the large ones. Did you also look at unmanaged merchants?

MR. CONRATH: And can we have the next slide?

A Yes, American Express did look at it. And, again, this is the slide we saw earlier this morning, coming back to look at more detail, where now we have in that first call-out is [3989] the revenue benefit that they saw from the deal. Earlier this morning, we talked about the offset from incremental cancellations, and you can now see them together in perspective, that the cost of the incremental cancellations was far below the revenue benefits they saw themselves getting.

And, then, as we discussed earlier, they weren't sure exactly what the suppression rate was, the incremental suppression, when it triggered. But they said that they were reasonably confident they were below that, so that their estimate was value

recapture was also profitable to the unmanaged merchants as well.

Q So when thinking about market power, is America Express' value recapture program evidence of American Express having market power in the relevant markets?

A Yes, it's evidence of their exercising it, because they did these price increases in both T and E markets but also non-T and E markets. They raised the prices certainly no lower than competitive levels, and they did to profitably. In fact, one of the things that's notable is they're saying that their revenues went up. Typically what you would expect to see happen when a firm raises its prices is the revenues might fall but its costs would fall further, and that's why you might do it. Here, they're saying there was so little response -- at least with managed merchants, there was so [3990] little response we raised the price. Revenues went up even before we had to get any benefit from saving -- normally what would happen if you raised your price, it would lower the volume, and then you would have some cost savings.

Q Is what that what would happen in a competitive market?

A Well, what in most markets you would expect that to happen. So you might say, well, we've raised their price; maybe our revenues have gone down a little bit, but our costs have fallen by even more. Here, what they're saying is when they raised the price, it actually raised their revenue, which is somewhat unusual for firms. I think it's further evidence that they had market power.

MR. CONRATH: If we can turn to the next slide, this one can be public, your Honor.

Q Can you summarize for us, Professor Katz?

A All right. So what this slide is doing is just – we were looking at it before lunch and just talked about now that -- look at the different pieces of evidence speaking to whether American Express possesses market power in the two relevant markets, that in each case the market structure is one that is concentrated, that American Express has a significant market share; the entry is difficult, and that supports a finding that American Express has market power.

Then, in both markets, American Express has insisting cardholders. Not every cardholder is going to [3991] insist on using American Express but substantial percentages will, and, therefore, it's quite costly for a merchant faced with such cardholders to cease accepting American Express. Again, that doesn't mean every merchant will accept them; there are other considerations, clearly, but it does mean, particularly, for the large merchants, that it's a costly decision for them to drop.

And, then, finally, as we've just been talking about after lunch, American Express' prizing strategy itself provides evidence that their premium pricing supports a finding they have market power. The fact that they engage in extensive price discrimination is consistent with having market power, and you have to have some market power to do it. And then value recapture is an example of successful exercise of market power.

MR. CONRATH: Next slide, please.

Q So now that you've identified American Express as having market power, what's the next step under the approach that we're following here?

A So remember the steps, we're at define markets, assess whether American Express had market power within it, and then the third step is to identify whether anticompetitive effects are likely, given the findings in the earlier stage about the scope of the relevant market and America Express' market power within that market.

* * *

[4011] Travelocity, and said, yes, it still had some beneficial effects but they were weaker, and so --

THE COURT: They went from being the preferred card to the official card.

THE WITNESS: That's right. And they said the effects of that – they're weaker. Just as there are other exceptions, there's exceptions for co-brand cards. But in all these cases, it's still limiting the overall degree steering. In this case of co-brand card, it's special cases. In terms of these preference campaigns, holding them short term, people in the industry have said the short term ones are less effective. They can not very effective during that short term but then they drop off after that.

And so there are exceptions, and those exceptions then do allow some of the competitive steering, but at the same time they're also limiting it. And one way to say it is there's no such thing as saying, well, there's enough competition. Always have more competition, and more competition would be better.

MR. CONRATH: Could we -- what does the second role on this slide mean?

THE WITNESS: So the second bullet is speaking to, again, my understanding of what American Express is saying, which is through their experts and through their executives, saying if they didn't have the rules, they wouldn't be able to [4012] maintain their differentiated strategy, which clearly is valuable, very valuable with some cardholders. And their experts have said, well, in the absence of these rules, what a merchant's going to do is just whatever is the cheapest network, they're going to push their customers into using that. And then a network such as ours, that comes in and offers a lot of value to cardholders is not going to be able to survive.

My conclusion is that that's not a valid argument, because it's ignoring merchants' incentive. An economically rational merchant, first off, is going to look at the quality of the network from the merchants' perspective, so if American Express or another network can differentiate itself by offering particular value to the merchant, the merchant will take that into account, and that's something that could offset a higher price.

But the other thing is the merchant takes its Customers' preferences into account. If merchants didn't care about their customers' preferences and just took whatever's cheapest, we would see no merchants in America except in credit and charge cards. All the merchants would just take debit cards, for example, because they're cheaper. The reasons merchants take credit and charge cards, even though they're more expensive, is precisely because the merchants care about their customers' preferences.

[4013] So if American Express generates significant value for its cardholders and can generate -- and it doesn't cost them more money to generate the value than the value itself, then they would be able to survive, because the merchants will want to accept American Express cards because their customers will want to use them. And I think that's, in fact, why Mr. Funda was saying this thing that one response to getting rid of the rule could be to increase cardholder benefits, in order to make those cardholders more attractive or more insistent, really, so that then merchants will continue to take American Express.

So my bottom line conclusion on that is if American Express is truly creating value through its differentiated strategy, then it will be able to compete successfully in a world where steering is possible, because this is the world that most business firms live in. It's manufacturers selling to retailers. Retailers are steering their customers all the time. When you walk into a store, they make suggestions to you which brands to use. If you go into super market, there are end-of-aisle displays. They can have special prices discounting. Most manufacturers live in a world with steering, and we certainly see manufacturers that successfully have premium products, not just premium pricing, premium quality to go with it. So I think there's no basis for concluding that these rules are essential to protecting [4014] American Express' differentiating model. The differentiating model can stand on its own.

Q Professor Katz, we've gone over several possible justifications for the merchant restraints, the anti-steering rules. Could you sum up your conclusions

about whether there is a procompetitive justification that warrants the anti-steering rules?

A My conclusion is that there is not, is that the rules do harm competition and consumers, where again, consumers means both merchants and their customers, and there's not an offsetting procompetitive justification.

MR. CONRATH: All right. Thank you. I have no further questions, your Honor.

THE COURT: Very well. Cross-examination.

MR. CONRATH: Mr. Chesler points out something to me, that I may have misspoken, that -- of course, obviously, are -- the chart 100 is not one of the surveys that Professor Ford testified about, it's a consumer survey. Professor Ford testified about the merchant survey. It's a different survey from the same source, but it was not one of the ones he testified --

THE COURT: The two exhibits you identified.

MR. CONRATH: Yes may we admit them?

THE COURT: 2703, which is the professor's CV and 2702, which is the slide presentation.

* * *

[4017] Q But you, in fact, agree with America Express' experts that American Express operates in one or more two-sided markets, don't you?

A Yes, you can view it that way.

Q I understand you can view it that way, but I'm asking if you view it that way?

A As I've indicated, I believe it can be viewed two different ways. You can view them as being -- you can have one two-sided market, or you can talk about two one-sided markets as long as you keep track of those two markets and how they interact.

MR. CHESLER: Your Honor, I'm told we need to switch the feed to our side of the courtroom.

THE COURT: Well, that's fine. I just didn't think you'd put anything up yet.

MR. CHESLER: No, I haven't.

THE COURT: Thank you for your efficient staff.

MR. CHESLER: Was that a compliment, your Honor?

THE COURT: No further comment. You're all doing an excellent job.

Q Professor, we put two books up there. One is your deposition in this case, deposition in some other litigation and your reports. That's volume one. Volume two are individual documents that -- some of which I will ask you to look at during the course of the cross-examination. So I'd [4018] like you to look in the first volume at your deposition in this case. And that's right up front in the book. And I'd like you to look at page 14, and I asked you, at line five, would you agree that American Express in conducting its business operating in one or more two-sided markets, and you said yes?

A Yes.

Q And I take it you agree with that?

A That's why I said just a few minutes ago that that's one way of viewing it, and I thought the other one

was appropriate as well, but, yes, I agreed this is a way to do it both then and now.

Q And, in fact, you agree with Professor Burnheim, and Professor Gilbert and Professor Hay that not only does American Express operate in one or more two-sided markets, but that an assessment of market definition, market power and competitive effects should account for the two-sided nature of the market, correct?

A Yes.

Q I'd like you to look in the second volume at Defendants' Exhibit 1917. They should be in number order. I hope they are.

A Yes.

Q I hope my efficient staff has put them in number order. You recognize 1917 as a presentation that you made in April of

* * *

[4037] that as an insult but if you'd just repeat the question.

Q Why don't we, so there isn't any failure of communication, why don't you look at paragraph 157 of your report which is the 7183, that is page 70. It should be the excerpt in your book.

A I'm sorry, would you repeat the paragraph number?

Q 157, it is at the top of page 70 and you'll see, I think I was reading it accurately, you say:

In summary, as a matter of economic theory, even if one knew that a proposed merger would increase some measure of network market power, it does not

follow either that interchange fees would rise or that even if interchange fees did rise, merchant or consumer welfare levels would fall as a result.

It goes on to say: It is critical not to draw unwarranted and misleading conclusions by focusing solely on one side of a two-sided market.

I take it you agree that you made that statement in that case, sir?

A I agree I made it and I agree with the statement.

Q Thank you.

Now, I believe that one of the markets that you say you defined for purposes of this case is the market for network services provided to merchants, correct?

A That's correct.

* * *

[4112]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
STATES OF ARIZONA, CONNECTICUT, IDAHO, ILLINOIS, IOWA, MARYLAND, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE, OHIO, RHODE ISLAND, TENNESSEE, TEXAS, UTAH, AND VERMONT,

Plaintiffs,

-against-

10-cv-4496 (NGG)
United States Courthouse
Brooklyn, New York

AMERICAN EXPRESS COMPANY, ET AL.,

Defendants.

Wednesday, July 30, 2014
9:00 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

* * *

[Testimony of Professor Michael L. Katz]

[4163] Honor?

A I don't recall saying that, but that's -- I agree with the statement.

Q All right. Let's look at your deposition, which is the first tab in Volume 1, transcript page 231.

A I'm sorry, you said page 231?

Q Yes, sir, I did.

A Thank you.

Q You have that page, sir?

A Yes.

Q All right. And I'd draw your attention to line 7 on 231 of your deposition. My question: "So far as you're aware, what factors tend to create an enhanced brand loyalty in the credit card industry?

"Answer: If a consumer thinks that he or she is, you know, getting particularly high value from using a particular card, I would expect that that consumer would be more loyal to that card in the sense of preferring to use it, and as long as that consumer continued to have good experiences with the card provider and with using, it would remain a user and I would call that being loyal.

"Question: Could that value, for example, come in the form of rewards?

"Answer: Yes."

And then your testimony goes on.

[4164] MR. CONRATH: Your Honor, I object to not reading the complete answer.

THE COURT: Yeah, read the rest of the answer, please.

MR. CHESLER: Okay.

Q "I should also state though since we brought up this issue about marketing, there are people who would say that's not evidence of loyalty at all, somewhat the way a friend of mine once said that dogs are loyal and he said they're loyal only as long

as you're feeding them. So that's why there's a debate in marketing about what we mean by loyalty. So that's why single-homing is not necessarily equivalent to the concept."

And then I asked you: "Well, to use your dog analogy might be analogous to they are loyal so long as they keep getting the rewards?

"Answer: Yes."

Do you recall giving that testimony, sir?

A I certainly remember the dog testimony, yes.

Q And do you stand by the dog, sir?

A As long as he doesn't bite me, yes.

Q Thank you.

And you would also agree, would you not, that there are no significant barriers that face issuers from offering rewards programs similar to American Express's?

* * *

[4172] transactions that would be charged at higher discount rates to merchants, didn't he?

A I'd have to recall specifically. I believe his testimony, as I sit here my recollection is he said that interchange rates would be driven up so that merchants would be paying more and that more money would be paid to the issuers' side than the consumers'. I think it was about interchange, but I'd have to go back and look.

Q All right. I think we're in agreement on that.

Now, you responded, part of your role was to respond to Professor Pindyck, wasn't it?

A Well, my role was to analyze, you know, the economic issues in the case, and certainly I took into account what he said and I responded where I thought he, you know, he either had a good point or a bad point, yes.

Q And one of the things you responded to Professor Pindyck about was you said that his focus on discount rates was unsound, didn't you?

A I think if we're talk -- yes, if we're talking about interchange, his focus exclusively on discount rates is unsound, yes.

Q And you testified that by focusing solely on one dimension of a multidimensional competitive behavior, he was providing an incomplete, and thus misleading, picture of economic effects.

[4173] Wasn't that your testimony, sir?

A Yes.

Q And you said that merchant and consumer welfare has to be measured in terms of the total package of benefits that they receive, not just the merchant discount rate, correct?

A So because this was in your opening statement, I actually had -- this is something I had gone back and looked at. So I want to just clarify a couple of things.

One, the consumer there is meaning consumer in the everyday use of the word. So that's why it's in -- it's what I would have said in current terminology as merchant and customer, but yes, I said it was about both of them. And that that statement was saying you have to look not just at price, but also at quality.

MR. CONRATH: Could I object to the fact that apparently the witness read Mr. Chesler's opening statement but not mine?

THE COURT: When you get his bill, you can adjust.

MR. CONRATH: I am delighted that he saved the time that would have been wasted reading my opening.

MR. CHESLER: I'm not good at taking --

THE COURT: I'm very impressed, Mr. Chesler, about the fact that the witness is so familiar with your work.

THE WITNESS: Not as familiar as he is with mine.

THE COURT: Apparently so.

* * *

[4175] outcome, for example, the Wal-Mart litigation and other factors, but yes, merchant discount rates did go up in the years following that litigation.

Q And the interchange, I think we've established, is by far the largest component of the merchant fee in the card industry, correct?

A Yes.

Q And one of the things that you emphasized in First Data, moving from Visa to First Data.

A Thank you.

Q One of the things you emphasized in First Data was that it was very important to acknowledge that increased interchange fees which the government was saying would occur in the presence of that merger were in fact passed back to consumers both

directly in rewards and indirectly in the overall services that issuers provide to consumers, correct?

A I don't recall saying the second part, but I would certainly agree with the -- that economic analysis, and I do recall the first part.

Q And to sum up this point, your view in First Data was that because of the two-sided interrelated nature of the market, it was incorrect to think that the effects of interchange fees on consumer welfare can be understood by looking solely at the merchant side of the market?

A Yes.

* * *

[4177] A Yes.

Q And that in a two-sided market, interchange rates can and have been driven up by an increase in competition, correct?

A Now, so you're now asking generically?

Q Yes. I'm quoting from your First Data testimony, but I quoted it exactly you gave it "in a two-sided market."

A Yes, I agree with that statement.

Q Thank you.

Now, is it similarly true, sir, that if interchange rates were to be lowered, that can harm consumers through the resulting effects on card issuers' pricing and service quality?

A Yes.

Q And can an increase in interchange rates also increase merchant welfare as well as consumer welfare?

A In theory, yes.

Q For example, an increase in interchange could provide incentives for issuers to offer card features like rewards that encourage consumers to use their cards with the merchants and that can benefit the merchants, correct?

A Depending on what the payment alternatives are, it could be the case, yes.

Q I just want to ask you a bit about the but-for world that you considered in connection with this case.

A The present case.

* * *

[4185] about one-fifth of American Express's, correct?

A That's correct, that's my recollection.

Q And so I take it the math would demonstrate that although there are more people walking around, apparently, with Discover cards in their wallets, or at least available to them, and more merchants where they could use them, they're spending much less on the cards, correct, than they are on American Express cards?

A That's right, American Express has a much higher spend per card.

Q And you would infer from that that American Express has somehow managed to provide a more compelling value proposition to the people that have its card than Discover has, wouldn't you?

A No, I would infer from that that American Express has put forth a value proposition that appeals to people who purchase a lot on their cards. In fact, I think Discover's value proposition is viewed very favorably by the people who hold Discover cards, but those people have different characteristics than the -- you know, on average, I'm sure there's some overlap, but on average the people who hold Discover cards have different spend characteristics than the people who hold American Express cards.

Q Now, staying just for one more minute with this but-for world with respect to this case.

[4186] You testified before that it's possible that merchant fees would go up, right?

A Following this case, yes.

Q And in fact, your view is that although they may go up, that we should just let the chips fall where they may. Isn't that your view, sir?

A If the chips are falling where they may as a result of increased competition, yes, that is my view.

Q So if all of the merchants who came in here, merchant after merchant after merchant, and said "my rates are too high, they need to come down" and if Mr. Conrath in his opening said "if we win this case, merchant rates will come down," and if it turns out that your proposition that they may go up turns out to be correct that's fine would you?

A It would depend on why they went up, but if the reason they went up is competition, that would be fine with me. There's certainly other reasons that they could go up that I would say they're not fine with me, by which I mean in conducting an antitrust

non-economic analysis I would find that there is a problem.

Q Thank you. Let me move to a different subject.

You agree, do you not, that many agreements between vertically-related parties can have procompetitive effects?

A Yes.

Q And in fact, a vertical restraint is not necessarily

* * *

[4193] A Yes, I would agree with that.

Q And you would also agree that the vast majority of American Express cardholders also have Visa and/or MasterCards, correct?

A Yes.

Q But the vast majority of Visa and/or MasterCard cardholders do not have American Express cards, correct?

A I believe that's correct.

Q So Visa and MasterCard could enter into agreements under a decree with the government and pay merchants to steer consumers, for example who show up with their American Express Card, to steer to Visa and MasterCard, correct?

A Yes.

Q Now, if American Express were governed by those rules and it were to pay merchants to steer to American Express from Visa or MasterCard, that would only work if the Visa or MasterCard consumer at the counter actually have an American Express Card in her wallet, correct?

A In terms of steering from that to American Express, yes.

Q And you recall that I also asked you whether in the but-for world that you considered here, if American Express found itself in a situation in which it had an accepting merchant that was actively steering its cardholders, cardmembers away to a competing card, American Express could not terminate those relationships and decide to walk away

* * *

[4258] Q So is it your -- let me ask you this, your analogy was that if you keep feeding the dog, the dog remains loyal; that's an analogy to rewards, so my question to you is can insistence driven by continuing spending on rewards be a source of market power?

A Yes. I mean, it's a source of market -- as my conclusion, it's a source of market power for American Express. It's also a key source of market power for Visa. And I think there's agreement among economic experts on Visa having market power; and I believe if you look to see the basis of that, there will have to be agreement that it's being driven by the loyalty or insistence of Visa cardholders.

Take a nonpayment industry example, and it will be an old one, because I'm going to talk about newspapers when they had market power, but newspapers are also an example of the two-sided platform because they bring together the advertisers with the viewers and subscribers. And it's recognized in the past that newspapers could have substantial market power with respect to advertisers, and the way they got that market power is by attracting readers, which meant continually having to invest in

providing content that the readers found attractive and, therefore, wanted to be in the newspaper.

So it's the same mechanism, that you're attracting the subscriber, and then that brings you the advertisers. And [4259] in the case of newspapers, again, before the rise of the Internet, they often had substantial market power against advertisers on the other side of the platform.

Q Do you recall some questions about Amex bringing competition on the issuing side during the *U.S. V Visa* time frame?

A Yes.

Q So going back to that point, Visa and MasterCard were owned by the banks that had a lot of overlap between themselves; is that right?

A Yes.

Q And since then there's been *U.S. V Visa*, the court decision, right?

A Yes.

Q And there have been IPOs with Visa and MasterCard, so that they no longer have the same overlap of ownership that they had before?

A They have changed their corporate structure, so instead of being associations, they're now corporations, but I have not examined the ownership under this new corporate structure.

Q Bank issuers today do compete with each other even if the bank issuers are on the same network; is that right?

A Yes, that's true.

Q And did you happen to -- in your reading for the Court's homework assignment of Mr. Silverman's testimony, did you [4260] happen to see his testimony about the fact that competition among -- the proposition that competition among issuers has driven up rewards amongst a wide variety of issuers?

A I'm not sure I recall the specific testimony. Certainly the -- I read a bunch of his testimony having to do with rewards and competing by offering attractive rewards.

Q Is it true today that different issuers of cards, not just American Express, but lots of different issuers of cards are competing with each other to provide the most attractive rewards for consumers in order to attract cardholders?

A They're certainly competing by offering what they hope cardholders will consider to be attractive rewards, in order to attract their business, yes.

Q Even if it were true 15 years ago that American Express was bringing a unique form of attraction for cardholders in the form of rewards, today there are lots of issuers who are bringing competition to attract cardholders through rewards and other programs?

A There was competition among issuers then there's competition now, yes.

Q Does the -- so -- the fact that there's competition on the issuing side, does that mean that competition on the merchants side is something that is unimportant?

A No.

Q Could you explain why not?

[4261] A Well, the prices, the profits and consumer welfare, the two-sided platform, are going to depend on what's happening on both sides of the platform. And competition on the merchant side of the platform is going to be an important part in determining that overall outcome.

THE COURT: Mr. Conrath, I think this may be a good time to break for lunch.

MR. CONRATH: Sure.

THE COURT: After lunch, we have about an hour left?

MR. CONRATH: Probably about that, your Honor.

THE COURT: All right. And you anticipate that you have very much on recross, at this point?

MR. CHESLER: Not so far, your Honor.

THE COURT: And so after Professor Katz' testimony is completed, we'll take a ten-minute break, and then you'll call your next witness after that.

MR. CHESLER: Our first witness, your Honor. We had several in their case.

THE COURT: I know that. I wasn't going to correct you, though, because I think I've done enough of that already.

MR. CHESLER: As far as I'm concerned, your Honor, that's where we are.

THE COURT: That's good. We'll take an hour for lunch. Thank you.

MR. CHESLER: Thank you, your Honor.

* * *

[4270] to say when you were answering that, you were answering it in the if sense and you were not agreeing that Mr. Chesler had correctly characterized the government's position, isn't that right?

A That is correct.

Q Could you turn to DX 6507 which is your -- or maybe your second report, if you prefer that volume.

If you would turn in DX 6507 to paragraph 148 please on page 78. Do you recall Mr. Chesler read you portions of the first paragraph and perhaps the second to the proposition that American Express is an important competitive check on the exercise of market power by MasterCard and Visa; do you recall that discussion?

A Yeah, my recollection is that he read paragraph 148.

Q Could you turn the page please to paragraph 150, and I think this was not read to you but I'd like to have it also in the record and ask you if this is also your opinion:

The fact that competition from American Express has important consumer benefits does not give American Express a free pass to engage in anti-competitive actions on the grounds that those actions benefit American Express. Indeed, this fact has the opposite implication. Weakening American Express alone would be sufficient to have significant harmful effects on competition and consumers, then it follows that weakening competition among all credit and charge card networks, which [4271] is the effect of American Express's merchant restraints, will harm consumers by even more."

Did I read that correctly?

A Yes.

Q And is that an important corollary to the opinion you expressed in paragraph 148?

A Yes, I stand by the opinion, I guess you could say it's a corollary.

Q Do you remember some discussion with counsel for American Express around the question of whether merchants are able to determine what a particular Visa or MasterCard type of card costs when it's presented?

A Yes.

Q I'd like to ask you some questions about that in relation to economic principles. Is it correct that it could be of value to merchants to be able to determine how much a particular Visa or MasterCard costs if the merchants could use that information to steer customers?

A Yes.

Q All else equal, if merchants have no ability to steer, there would be little reason for merchants to invest in technology that would allow them to determine the costs of a particular Visa or MasterCard, isn't that correct?

A Yes, if you're saying as part of that did they know what the average cost is, yes, because they would just have to

* * *

[4276] here is to your expert report in U.S. v. First Data; is that right?

A That's correct.

Q Could we look at your expert report in U.S. v. First Data which is DX 7183.

A I'm guessing it is volume one.

Q Yes, I think so.

A I'm sorry, could repeat the number please.

Q DX 7183. I'd like to ask you to direct your attention to paragraph 156 in DX 7183.

A Yes.

Q So, if you look at that, the relevant sentence that's quoted there in paragraph 156 of DX 7183, were you in fact talking about discount rates in that paragraph?

A No, what I said in the paragraph, both places where the word "discount" appears in square brackets I was talking about the interchange rate.

Q All right. Can you clarify for us whether it makes a difference whether one is referring to an interchange rate or a discount rate?

A It makes a huge difference for these purposes because with an interchange rate, which is what I was talking about in my report, by definition it is a pass-through the network passes through, so that when the interchange rate goes up, the merchant is paying more and the cardholder side of the market [4277] is paying less. That's what the interchange is doing, it is a transfer from one side to the other. It is impossible to raise the interchange to the merchant without then having an equal and offsetting effect of interchange on the other side because that's the definition of interchange is a payment from one side

to the other. And so, what I was testifying to in the First Data case is saying, well, it doesn't make sense to say here's what happens when you raise to one side and simultaneously lower to the other side and look only at the one side.

Now, in talking about a merchant discount, it's certainly correct, the interchange is the biggest portion but there are other pieces and because of those other pieces such as the network fees it certainly is possible to raise the merchant discount without affecting the price on the other side, whereas that's a logical impossibility in the case of changing just the interchange rate. So, it is a very significant difference, it is just a different meaning.

Q And so, your criticism in the expert report in the First Data case, your criticism of Professor Ordover who was at that point the government's witness, was that the theory of raising interchange rates inherently involved evaluation or a rate that had affected both sides of the market; is that right?

A Yes, the interchange inherently affects both sides and therefore you should take that into account when assessing the [4278] effects of a change in the interchange rate.

Q In this case is your theory that the harm caused would be a raise in interchange rates?

A It is my testimony that as a result of the harm to competition which then reduces the sensitivity to price on the merchant side but that that will raise what the networks will keep but I also anticipate that that would have an effect on the interchange as well by affecting the balance.

Q So, your testimony is that if the merchant discount rates go up, have gone up as a result of the reduction in competition, some of that stays with the network and doesn't pass through to the other side, is that right?

A That's correct.

Q And all of the many quotations that you were read concerning First Data were in the context of your criticizing Professor Ordover for a theory that was about interchange rates only; is that right.

A That's my recollection as I sit here. I was read several quotations but that's my recollection.

Q Do you recall being asked some questions about the U-shaped charts, the charts that showed usage of credit and debit at a variety of retailers that we didn't -- whose names we didn't mention?

A Yes.

Q And you also looked at some variations of those charts

* * *

[6619]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
STATES OF ARIZONA, CONNECTICUT,
IDAHO, ILLINOIS, IOWA, MARYLAND,
MICHIGAN, MISSOURI, MONTANA, NEBRASKA,
NEW HAMPSHIRE, OHIO, RHODE ISLAND,
TENNESSEE, TEXAS, UTAH, AND VERMONT,

Plaintiffs,

against-

AMERICAN EXPRESS COMPANY, ET AL.

Defendants.

10-CV-4496 (NGG) (RER)

United States Courthouse
Brooklyn, New York

Monday, August 18, 2014
9:30 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR BENCH
TRIAL BEFORE THE HONORABLE
NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

* * *

[Testimony of Professor Michael L. Katz]

[6664] A Yes, I did.

Q All right. Is one flaw his treatment of Continental Airlines' exit from American Express's rewards program?

A Yeah, because what I found is there was some problems on the other side -- well, it is not the other side of the equation but the other components in terms of the rewards liability and how he interpreted that and one of those problems was with the treatment of Continental.

Q All right. Could you turn to the next page of your exhibits, Slide 8 of PX 2778.

A I have it in front of me.

Q So, first of all, what does it mean to say that Continental exited the Membership Rewards program, American Express's Membership Rewards program?

A So, my understanding is that Continental announced that they would be leaving American Express's Membership Rewards program, which is to say that American Express cardholders enrolled in Membership Rewards after the date of their exit would no longer be able to redeem their rewards to travel on Continental and that people were given some warning that that was coming.

Q All right. What did that announcement and that change do to the value of American Express's Membership Rewards program?

A Well, for people who wanted to redeem miles on [6665] Continental, it lowered them because in the future you wouldn't be able to do it at all and you might also want to just rush to do it now, maybe travel earlier than you wanted to, but it reduced it.

Q All right. And what do you see in your Slide 8, the question and answer from Mr. Funda there?

A Mr. Funda is making this same point, he didn't elaborate the way I did, but that it is making the program worse from the point of view of the cardholder.

Q All right. So, if Continental's exit, impending exit from the program made the program worse from the perspective of American Express cardholders, what impact should that change have had on a correct calculation of American Express's two-sided price?

A Well, we need to step back for a second because there's a subtly in calculating two-sided price in this way, because we're talking about customers here who are getting rewards, right. It's not -- we talked about them facing a negative price because you get rewarded when you travel but you're not literally being told, well, the price is minus, you know, 25 cents or whatever, you're getting something of value. And so, when the value of what you're getting goes up, we've heard that's equivalent to a price decrease. That's the concept of the two-sided price, we've got to offset what's happening on the cardholder side. So, when the value of the rewards goes [6666] up, that's equivalent to a price decrease but it also follows the other way, that when the value of rewards goes down, as it has here, that corresponds to a price increase.

So, looking at the effects of Continental's exit, it was equivalent to an increase in American Express's two-sided price.

Q So, did Dr. Bernheim's methodology calculate that American Express's two-sided price increased or went up because of Continental's impending exit from the Membership Rewards program?

A No. His methodology, which focused on the rewards liability and the accounting system, wouldn't pick up this effect at all, it doesn't look at the value to the cardholders and, in fact, as it turned out in Continental, the way he did -- the way he did it, not only did he miss this but it actually did exactly the opposite.

Q All right. Could you please turn to PX 2644 in your binder.

MR. CONRATH: Your Honor, PX 2644 is an e-mail from Katherine Kwan. This is an American Express e-mail dated Thursday, February 17th, 2011, to a large group of people, and the subject is U.S. MR, Membership Rewards, review 2011 zero plus 12F.

And it says: Attached is a summary of the final version of the U.S. MR 2011 zero plus 12 forecast and then

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GUIDE TO TRIAL TRANSCRIPT

[redacted]	[redacted]	[redacted]
Kevin Thiel (Alaska Airlines)	July 7 July 8	181-288 310-372
John Robinson (Ikea)	July 8	373-464
George Satkowski (Enterprise)	July 8	466-534
Denis Bouchard (Sears)	July 9	547-617
Joseph Quagliata (Amex)	July 9 July 10 July 14	619-797 997-1113 1128-1218
Roger Hochschild (Discover)	July 10	811-994
Dwaine Kimmet (Home Depot)	July 14	1219-1338
Jeffrey A. Rein (Walgreens)	July 14 July 15	1339-1408 1420-1521
Diedre O'Malley (Best Buy)	July 15	1522-1601
Scott Brennan (Hilton)	July 15	1602-1674
Jennifer Dale (Sprint)	July 15 July 16	1676-1729 1736-1765
Prof. Gary T. Ford (Government Expert)	July 16	1768-1895
Shane Berry (Amex)	July 16 July 17	1901-2009 2018-2154, 2249-2302

[illegible]	[illegible]	[illegible]
Peter Haslam (Office Depot)	July 17	2155-2248
Frank Bruno (Crate & Barrel)	July 21	2313-2360
Christopher D. Priebe (Southwest Airlines)	July 21	2368-2519
Steven Holtey (Solitude Mountain Resort)	July 21	2520-2559
Jack Funda (Amex)	July 21 July 22	2560-2603 2613-2834
Tom Pojero (Amex)	July 22 July 23	2838-2913 2934-3134
Russel L. Gibson (Sinclair Oil/Grand America Hotels)	July 23	3134-3221
Nina Biornstad (MasterCard)	July 24	3231-3301
Bradford Morgan (Visa)	July 24	3303-3456
Patrick Corbett (Amex)	July 24	3458-3502
Joshua Silverman (Amex)	July 28	3519-3802
Prof. Michael L. Katz (Government Expert)	July 29 July 30 August 18	3815-4105 4117-4288 6626-6745
Ben Mitchell (Official Payments)	August 13	6113-6191

[redacted]	[redacted]	[redacted]
Kenneth Chenault (Amex)	July 30 July 31	4290-4382 4388-4659
William H. Glenn (Amex)	August 4	4674-4911
John Hayes (Amex)	August 4 August 5	4912-4978 4985-5007
Prof. Richard J. Gilbert (Amex Expert)	August 5 August 6	5008-5231 5238-5272
Nelson Gutierrez (Strictly Bicycles)	August 6	5274-5305
David Miller (Delta Airlines)	August 6	5308-5406
Pamela Codispoti (Amex)	August 6 August 7	5409-5512 5565-5662
Michael Landau (Drybar)	August 7	5522-5563
Edward P. Gilligan (Amex)	August 7	5663-5846
David Flueck (Starwood Hotels)	August 11	5861-5925
Glenda McNeal (Amex)	August 11	5926-6102
Prof. B. Douglas Bernheim (Amex Expert)	August 13 August 14	6202-6409 6414-6613